Cucamonga Vineyard Co., et al, plaintiff

In the Superior Court

OF THE

COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA.

DEPARTMENT ONE

Cucamonga Vineyard Co., et al.,

Plaintiff

vs.

Defendant

No. 9187. Vol. 4.

HON. FRANK F. OSTER, Judge.

I. BENJAMIN, Official Reporter.

COUNSEL APPEARING:

For Plaintiff

For Defendant

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J. W. McKINLEY.

IN THE

Superior Court

OF THE

County of San Bernardino

State of California

Cucamonga Vineyard Company, et al.,

Plaintiffs

vs.

San Antonio Water Company, et al.,

Defendants

Vol. 21.

Tuesday, March 2,1909

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I. BENJAMIN, Official Reporter

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In the Superior Court of San Bernardino County, State of California.

Cucamonga Vineyard Co. et al., Plaintiffs, vs. San Antonio Water Company et al., Defendants.	March 2, 1909. Twenty-first Day.

Mr. Joliffe: In this case the defendant moves the substitution of J. A. McKinley in place of former Judge Chapman, now deceased, as attorney for the San Antonio Water Company, the Ontario Power Company, J. M. Elliott, the Union Trust Company of San Francisco, J. J. Atwood, and the Upland Water Company.

Mr. Gregg: And, if your Honor please, my name has been -- the name of the firm of Gregg & Surr has been entered by mistake as attorneys for several defendants. We are attorneys for the defendant San Antonio Water Company and the Ontario Power Company, but beyond that our clientship does not go; and I would like the record to show that we are the attorneys only for the Ontario Power Company and the San Antonio Water Company, and that wherever else in the pleadings we are mentioned it does not apply.

The Court: Your names are affixed to the other clients pleadings?

Mr. Gregg: I think so.

Mr. Britt: You do not appear for J. M. Elliott?

Mr. Gregg: No, sir.

Mr. Britt: Do you also appear for the Upland Water Company?

Mr. Gregg: We do not.

Mr. Britt: Your name goes out also. On the part of J. J. Atwood, the same?

Mr. Gregg: The same.

Mr. Britt: And the Union Trust Company the same?

Mr. Gregg: Yes, sir.

Mr. Britt: So that you remain as of counsel for the two defendants San Antonio Water Company and Ontario Power Company only?

Mr. Gregg: Yes, sir.

The Court: Does that leave the other parties unrepresented?

Mr. Gregg: No; they are abundantly represented by other counsel with the same clients; and I take this position for the reason that I am, as your Honor knows, withdrawing from practice as much as I can.

Mr. Britt: That leaves Judge McKinley and Mr. Joliffe representing J. M. Elliott, also the Upland Water Company, J. J. Atwood, and also the Union Trust Company.

Mr. McKinley: Yes, sir; with Gregg & Burr for the two original companies.

The Court: Are all the parties who were brought in under the order of the Court now before the Court?

Mr. Britt: They have all appeared and all have answered except the Title Insurance & Trust Company and the Cucamonga Water Company who have a demurrer here.

Mr. Joliffe: There is a cross-complaint of the San Antonio Water Company against the Cucamonga Water Company and the intervenors, and we ask to dismiss the cross-complaint.

Mr. Leonard: As to the Cucamonga Water Company, as to the complaint in intervention and the complaint, we have a de-

murrer filed, and we would like, if your Honor is willing, to have it continued for a day or two so as to give us an opportunity to arrange it by stipulation.

The Court: Is that agreeable?

Mr. McKinley: That is agreeable to me.

Mr. Stevens: But you will answer if it is not disposed of?

Mr. Leonard: Yes, sir.

The Court: Where do you want to begin on this mess? I was wondering to what extent the issues have been changed. I have heard something about amended pleadings being filed by the original parties.

Mr. Britt: I suppose the Court has given no attention to the pleadings since the adjournment of the trial?

The Court: I have not.

Mr. Britt: There was an engrossed complaint called the fourth amended complaint filed.

The Court: Does it change the issues substantially from what they were before?

Mr. Britt: Not materially. We made some allegations against these new parties,-- about the same as will be found in an action to quiet title. The allegations as against the Ontario Power Company are not materially different from what they were in the amendment which the Court had allowed previous to the conclusion of the plaintiff's case.

The Court: Do any of the new answers raise any new issues?

Mr. Britt: Oh, yes; they raise new issues.

The Court: I assume they deny what you allege; but do they raise any new issues affirmatively?

Mr. Britt: Yes; we have answers here from the Ontario

Power Company and the San Antonio Water Company, 140 pages in length, each setting up various estoppels and other defenses which have been previously interposed. I suppose that probably it would be as well for the new pleadings to be read here to the Court.

The Court: I judge from the armfull of papers I wouldn't know any more about it after you got through. I would rather have a statement than a reading of them. Or, if not, I could take it between sessions and read them over. But I assume you are ready to go to work, and I want to facilitate the matter of the introduction of the evidence.

Mr. Britt: That may be somewhat a violent assumption, circumstances considered. However, as regards these new answers -- particularly these very long answers,-- it has been my intention to make an abstract of them, and I will have here a stenographer this afternoon for that purpose, and I hope by to-morrow afternoon or to-morrow morning to be able to have an abstract of these pleadings which will embrevisto the substance of them very much, but I haven't got it now.

The Court: There isn't any particular urgency why I should be advised as to the exact issues unless it is for the purpose of passing on objections that may arise. I suppose those matters may be presented when they come up. Are you ready to proceed with the evidence now?

Mr. McKinley: We have an abstract of the pleadings. Is there a stipulation made as regards the testimony being applicable to the new conditions?

Mr. Waters: The stipulation has been signed by all except Messrs. Goodsell and Leonard.

Mr. Leonard: We are ready to stipulate in open court.

Mr. Waters: I would like to have it all in the same form. Have you signed the stipulation?

Mr. McKinley: I have not. I assume Mr. Joliffe has.

The Court: The purport is to stipulate the evidence in to all these parties as far as applicable?

Mr. Waters: Yes; with certain qualifications, that we may recall any witness they call for, otherwise his testimony goes out.

Other appearances:

For the Title Insurance and Trust Company, and the Cucamonga Water Company, F. A. Leonard and Henry Goodcell.

For the Hermosa Water Company, H. Conner.

For Samuel Johnson, H. Conner.

For the Upland Water Company, J. S. McKinley and H. H. Joliffe.

For J. J. Atwood, J. S. McKinley and H. H. Joliffe.

For the Union Trust Company, J. S. McKinley and H. H. Joliffe.

For the Sunset Water Company, Curtis & Curtis.

The Court: Is the stipulation now signed by everybody?

Mr. Stevens reads the stipulation and the same is filed.

Mr. Britt: If the Court please, we had expected to introduce various continuations of the observations and measurements of water made at Cucamonga Springs and in that vicinity since the last series which was introduced in evidence here last winter, and Mr. L. T. Wright was in charge of that and has the maps and diagrams. I went over the matter with him on

Saturday and I expected him to be here before this time, and he has not arrived. The understanding was that he would be here.

The Court: Haven't you some other evidence to put in?

Mr. Britt: The Court will recollect that the plaintiffs rested their case.

The Court: Is that all the evidence that you desire to offer?

Mr. Britt. That is all I know of at present; but there may be some more when we have an opportunity to confer together and comb through these pleadings.

Mr. McKinley: The record does not show that you rested. It shows that you said you were almost through, but counsel tell me that you did not rest.

The Court: My understanding is that there was some such reservation.

Mr. Britt: Yes; that is true. That but for the bringing in of the new parties we would have rested at that time. But inasmuch as new parties were to be brought in it would scarcely have been proper to rest the case absolutely on behalf of plaintiffs. My own impression is that inasmuch as there are several defendants here whose antagonism to plaintiffs in the case is doubtful, and inasmuch as there are so many new pleadings and several new counsel, if the Court will allow us until to-morrow morning to confer with them, as Mr. Leonard suggested here, there is a probability that a stipulation will be arrived at which will eliminate the Chamberlain Water Company which is the more important of the new defendants; and if you will allow us till to-morrow morning to gather the loose ends (because it is really more difficult to con-

mence the trial in the middle as this is now re-begun than to begin a new case) and it will facilitate the future movements of the case and be less annoyance to the Court as well as counsel.

The Court: Is that the general consensus of opinion?

Mr. McKinley: I don't think any of our side have been consulted about that and we want to get along as fast as possible. I suppose Mr. Wright will be here pretty soon.

Mr. Britt: You are disclaiming ~~xxxxx~~ representing some of the defendants and they have got their independent defenses.

Mr. McKinley: I understand that.

Mr. Britt: And if we arrange with them about the order of procedure or the extent to which they antagonize the plaintiffs in the case it will facilitate the movements of your own defense. Mr. Waters suggests that if the other defendants here have any witness whom they are keeping with a view to testifying later, and want to take the testimony out of order and are ready to produce it, we have no objection to that.

Mr. McKinley: We don't want to do that at all.

The Court: There is only one thing I want to say and now is the time to say it: While I am disposed to defer largely to counsel in the conduct of the case, I feel that in justice to other litigants who are endeavoring to be heard I must insist on the case going ahead without any great amount of delay.

Mr. Britt: We will cooperate with the Court to that end. Everybody is sincerely desirous that the case should be tried and a trial concluded and the case submitted as quick-

ly as possible, and we don't expect to ask any delays in the matter.

The Court: I think we had better take a recess until half past one, and if Mr. Wright is not here we will go on as we do in regard to other witnesses.

Mr. Britt: We are not offering any excuse for Mr. Wright. Possibly for some reason he has been delayed.

The Court: We will take a recess till half past one o'clock.

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AFTERNOON SESSION:-

C. W. JOHNSON.

C. W. JOHNSON, a witness produced by plaintiffs, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Britt: Q You have testified before in this case?

A Yes, sir.

Q Have you been keeping any records of the elevation of the water in wells in the neighborhood of the Cienegas Springs and of the flow of the water from tunnels and similar data of that nature since the adjournment of the trial of this case in February, 1906.?

A Yes, sir.

Q Who made the measurements?

A I made them.

Q When you made them did you make any notes?

A Yes, sirx.

Q What is this paper that you now have in your hand?

A This is showing the measurements. That is, this is the original, I believe.

Q This was made by Mr. E. T. Wright?

A It was made in the office of Mr. Wright from my measurements.

Q Have you gone over this document and checked it up with the original notes made by you of your various measurements?

A Yes, sir.

Q Do you know whether or not this shows the same figures which you entered originally in your notes of those several measurements?

A Yes, sir.

Q It does?

A Yes, sir.

Q Shows them correctly?

A Yes, sir.

Q I notice in the left hand column of this tabulation under "Name of Observer" that C. H. Johnson appears generally, and sometimes E. T. Wright: Are you the person named as C. H. Johnson in that column?

A Yes, sir.

Q Then follows a column with dates entered next to the right of the column containing the name of the observer. State whether or not those dates correctly represent the dates of observations made by you.

A Yes, sir; those are the observation dates.

Q The succeeding columns on the tabulation show the several wells and tunnels and weirs and the quantity of

water measured by you respectively, and the depth of water or depth to water in the wells.

A. Yes; those are the points that we measured at.

Q. All the data contained in this tabulation correspond to your original notes, do they?

A. Yes, sir.

Q. State whether or not you made these measurements as a continuation of similar measurements made by you previous to January, 1903?

A. They were a continuation of the measurements made prior to that.

Mr. Britt: I will say, gentlemen, that this witness has testified before concerning similar measurements made by him and that the results of his observations have been tabulated and the tabulations are in evidence, as Judge Gregg and Mr. Joliffe will recall. There are some measurements on this tabulation exhibited to counsel which this witness did not make, so it is hardly ready to offer in evidence. We will qualify it for admission in a few minutes.

Q. Mr. Johnson, on the 11th day of May, 1906, did you make any observation of the elevation of water in the wells of the San Antonio Water Company north of Base Line?

A. I believe on that day. Yes. That is my memory of it. A bout that time.

Q. The wells which are mentioned here as the Bashell well, the Rubio well and the San Antonio Water Company's wells nos. 1, 2, 3, 4, 5, and 6, I believe-- no, no. 6 was the Rubio well. Was that the series of wells on which--

A. The ones above Base Line, yes, sir; the San Antonio

wells.

Mr. McKinley: What date was that?

Mr. Britt: May 11, 1908. Who was with you at that time?

A Mr. Trask and Mr. Leeke, I believe, were the parties.

Q Mr. Leeke here in the court room now?

A Yes, sir; the manager of the San Antonio Water Company.

Q The San Antonio Water Company and the Ontario Power Company?

A Yes, sir.

Q Did you communicate those observations to Mr. A. T. Wright

A Yes, sir.

Q Have you examined this plat or chart which I hold in my hand here and which is inscribed "Map of a part of Cucamonga showing contour lines and water developments at Red Hills"?

A No; I have not looked that over.

Q And you don't know whether Mr. Wright has put on this map the figures that you gave him?

A I can't say as to that.

Q You gave him the result?

A I gave him the result of the measurements.

Mr. McKinley: I don't know whether they are the same figures here, but there are a lot of figures here.

Mr. Britt: The figures on this map purport to represent water above sea level. That was for Mr. Wright's calculations. Before we proceed with the further production of evidence or the cross examination, it would be proper to have an understanding with Mr. Leonard who has not made any issue of fact on the part of the Cucamonga Water

Company if the testimony which is now coming in and which will come in until his answer is filed, if he files an answer, will be regarded as applicable to any issue raised by him in the answer which he may hereafter file on behalf of the Cucamonga Water Company and the Title Insurance and Trust Company in so far as it may be relevant to those issues?

Mr. Leonard: It will be so stipulated.

Q. Mr. Johnson, in 1903 what business were you following?

A. Zanjero of the Cucamonga Water Company.

Q. Do you know the location of the well called on this map on the board here, which map is marked "Plaintiff's Exhibit 1", no. 14?

A. Yes, sir; I know the location of that.

Q. On land of the San Antonio Water Company-- I won't say what company the land belongs to-- but indicated as at the head of the Radio tunnel on this plat? The northern end?

A. Yes, sir.

Q. What time in the year was it?

A. It was about June according to my recollection.

Q. At that time had the well been connected with a gallery or any other tunnel connection with the Radio tunnel?

A. It had been connected by a gallery and was being siphoned out.

Q. Was that gallery on a level with the floor of the tunnel?

A. No, sir; above the tunnel level.

Q. Do you remember how far?

A. No, sir; I didn't measure it.

Q Was there any water being abstracted from the well at that time?

A Yes, sir.

Q In what manner?

A Siphon.

Q How was it operated? Explain the process,-- how the water was taken and what was done with it. I don't mean where it was used, but whether it found its way into the Radic tunnel and in what manner.

A Well, one leg of the siphon into the shaft leading into the tunnel and the other into the well, and the water was transferred from the shaft into the well connected with the tunnel.

Q What sort of a siphon was it?

A An cast iron pipe.

Q Do you remember the size of it?

A I did not. I didn't measure it.

Q Did you see it?

A I can't say as to that. I believe I did.

Q Did you see the water discharging?

A It was discharging into the tunnel-- into the shaft connected with the tunnel.

Q How was the shaft connected with the tunnel? Was it directly over the tunnel?

A Yes, sir.

Q That is, the Radic tunnel?

A Yes, sir.

Q About how high above the tunnel was the curve of the siphon?

A. That I can't say, at the time. I didn't measure it.

Q. Do you know how high above the tunnel or approximately how high above the tunnel that leg of the siphon was inserted into the well ~~xxx~~ so situated?

A. No, sir; I couldn't tell.

Q. Do you know at what elevation above the tunnel the water was discharged from the siphon into the shaft?

A. No, sir.

Q. Now you say there was a gallery from the shaft to the tunnel-- I mean into the well.

A. Yes, sir.

Q. Do you know how high that gallery was above the bottom of the tunnel?

A. No; I do not.

Q. What was its depth below the surface of the ground?

A. I didn't measure it; I don't know; I can't say.

Q. Do you know whether afterwards there was any further work done connecting the well with the tunnel?

A. Yes, sir; later on.

Q. How much later on?

A. That I couldn't say exactly; probably a year later.

Q. Who was carrying on this business of siphoning the water from the well into the tunnel?

A. I understand the San Antonio Water Company--

Mr. McKinley: We object to what he understood.

Q. What did you know about it? Who was bossing the job?

A. The superintendent at that time I believe was Mr. Hanly and Mr. Locke was manager of the company.

Q. That doesn't quite answer the question. I am inquiring

who was bossing the job.

A Mr. Hanly.

Q Did you see anything of Mr. Locke around there?

A That I couldn't state exactly. I believe I did, though, at times. It was at various times that I was around in that part of the country in my duty as zanjero.

Q You say that work was prosecuted afterwards for the purpose of connecting the tunnel and the well no. 14. What sort of work was that?

A There was the sinking of the shaft down to the tunnel level-- the shaft around the well-- to get to the tunnel level.

Q Then what was done after the shaft reached the level of the tunnel?

A They placed a pump in, I believe, testing.

Q You say that work was about a year after this siphoning business was going on?

A To the best of my memory; yes.

Q Did you observe at any time the opening of a tunnel connection or the tunnel proper or a branch of the tunnel or extension of the tunnel to the well?

A Not directly; no. It was going on during those several years of my superintendency of the Cucamonga Water Company. The exact date I can't testify to.

Q Was there an engineer in charge of the work?

A Not to my knowledge at the time.

Q Did you at any time during the prosecution of that work see Mr. Locke on the ground?

A Yes, sir.

Q What was he doing there?

A Simply taking observations, I presume, of the work.

Q I didn't ask you to presume. I ask what you saw him engaged in. Not your inferences, but anything that you saw Mr. Lecke doing there in connection with the diversion of water.

A Being manager of the company he must have been looking after the work.

Cross Examination.

Mr. McKinley: Q How long were you zanjero?

A About five years.

Q During what years was that?

A From 1901.

Q Had you been assistant zanjero at any time before that?

A At several different times; yes, sir.

Q You worked a good many times there?

A Yes, sir.

Q With regard to these dates you are not able to fix them very exactly?

A Not very exactly. I kept no note at that time of the dates.

Q At the time you made these measurements indicated on this chart did you make any other measurements?

A There were a few that were made by myself/ Mr. Lecke and Mr. Trask that are noton there,-- the depth of the San Antonio wells.

Q Were there any others than that made by youf at any of these times?

A None but what is shown on the tabulation.

Q. No others than what were made along with Mr. Leake and Mr. Trask?

A. Yes, sir.

Q. That is the well that you designate as well no. 9 here, Mr. Johnson?

A. That was at the head of the Lone Star tunnel-- the Cucamonga Water Company's property.

Q. Designated "6" here?

A. That is the proposition.

Q. It is the one designated on the map as well no. 6, 1097?

A. Yes.

Examined by Mr. Haskell:-

Q. I understood you to say that sometime in 1903 there was a siphon connecting the no. 14 well with the Lytle tunnel. Now, standing on the surface of the ground could you look down on the well and see the top of the siphon entering the well?

A. Yes, sir.

Q. About how far from the surface of the ground was it to this siphon?

A. I didn't measure that. I couldn't state the exact distance.

Q. You could state approximately, couldn't you?

A. That siphon was changed at times. From my observation at the time I should judge it was about 60 or 70 feet down, just looking at it.

Q. How many feet?

A. About 60 or 70.

Re-Direct Examination.

Mr. Britt: Q You say you were zanjero for the Cucamonga Water Company five years commencing with 1901?

A Yes, sir.

Q Between that time and after that time did the Cucamonga Water Company open any new wells communicating with the Eadie tunnel?

A Yes, sir.

Q How many?

A One.

Q Could you locate that well on this map plaintiff's exhibit 1?

A Yes, sir.

Q Point it out if you please.

A The one right here-- no. 2, as it is called, on the map here. That can't be the one at that date though. That was opened up just before I went on-- the season before I went on.

Q Then that well was not opened during the time you were zanjero?

A No, sir; not that one.

Q Well, never mind about that. Mr. Wright, I think, will know about that. I will not question you further on the subject. During the time you were zanjero of the Cucamonga Water Company where was that company using the water which it drew from the Eadie tunnel?

A On the lands of the Cucamonga colony.

Q Do you know what quantity?

A That varied at different times.

Q Varied within what limits?

A Well, from 30 inches to the neighborhood of 100.

Q Were any of the wells which-- wells of the Cucamonga Water Company-- which opened into the tunnel capped at that time?

A Yes, sir.

Q Which?

A This well that we have reference to-- well no. 2-- was capped at one time, and they also capped another one or tried to cap it, the one I refer to as to our capping further on.

Q Did you succeed?

A Not successfully, no. It was impossible to hold the water down.

Q When was it that you made that attempt?

A I couldn't state exactly. About 1905 or 1906.

Q Were any of the others capped?

A We had one more further down the tunnel that was capped that was successful.

Q Was it capped all the time?

A Except when we were drawing for irrigation.

Q How many wells there in all?

A There were three wells.

Q Only three of the Cucamonga Water Company?

A Yes; in operation.

McCross Examination.

Mr. McKinley: Q You testified before in the case about this siphon connection being made on June 8, 1903, and that you made a measurement of the water on June 19, showing the

water flowing over the weir no. 4-a after the siphoning of the well no. 14 into the tunnel, 200 inches. What water did that measurement include? If you would like to look at this testimony to straighten out in your own mind just what I am asking you about, you may do so.

A I would like to refer to it. (Is handed transcript)

Q It is not a contradiction reflecting on your testimony, or anything, but just to find out what that referred to.

A This must have been the water flowing from the San Antonio Water Company's tunnel over weir 4-a.

Q What all did that include?

A That includes the siphoning and the general flow of the tunnel up to the 90-acre tract, over the weir at 4-a.

Q At that time how far above the 90-acre tract did the tunnel run?

A I can't state the exact measurement. It ran some distance above there. It was very close up to well no. 14.

Q Which is the well no. 2 that you refer to as having been hard to cap?

A The one shown on the map here in the 90-acre tract. This one right here.

Q Previous to this capping how much water were you getting out of it?

A That water varied at times. When I took charge of the company there was about 100 inches flowing from that branch of the tunnel. I made no direct measurements of the well. It all intermingled with the tunnel projected out to the well-- that is, going out to the well.

Q 100 inches from the branch over to 2?

A Yes, sir.

Q About what time was that?

A That was about 1901 or in the fore part of 1902. I took charge, I believe, in December, 1901, and it must have been in 1902 that I observed this water from that point.

Q How long did that flow continue?

A It continued a short time and gradually decreased through the summer.

Q Until when?

A The dates I can't state.

Q About how long?

A For several months.

Q About when was it that you capped it?

A The capping was later on. The dates I can't say. I believe about 1905.

Q What sort of a flow of water was there from it just before you capped it?

A The water had decreased quite a bit, and I believe that another well had been connected by that time, so that would change the measurement again at that point.

Q How much water was there there when you capped it?

A I couldn't state the exact amount.

Q I don't care for the exact amount, but just approximately.

A I believe it was in the neighborhood of 130 inches, to the best of my recollection, from the two wells and the tunnel.

Q Two wells and the tunnel on the side of well no. 2?

A Passing over that weir 4-a.

Q But I am talking about the well that you capped. This

well no. 2.

A This is projected further out here. Here is where the measurements were taken.

Q Weir 4-a?

A Yes, sir.

Q How much water was flowing from that well no. 2 at the time you capped it?

A I c n't state. I never measured it.

Q You have observed the water and made innumerable measurements of that Cucamonga region?

A I can't state the exact amount.

Q I don't want the exact amount but just simply in the neighborhood, and quite a little distant neighborhood, too.

A That water varied at different times. I can't make any exact statement of it.

Q I don't want it exact, but just generally, at the time you capped it. A bout how much water was flowing out of it?

A That I don't remember.

Q What did you cap it for?

A For the purpose of storing the water for summer irrigation and trying to hold it back.

Q This was in the fall?

A Yes, sir.

Q What did you do with that well next summer?

A We tried the same performance but not with any more success.

Q You took the cap off, did you?

A In the spring; yes, sir.

Q What water did you get that weir from that well?

A I have no direct recollection only what was tabulated. I don't know whether there was any tabulation of that or not.

Q Did you get any considerable quantity of water from that well no. 2 either of those years?

A There was some increase; yes, sir.

Q Was there any considerable production from well no. 2 either of those years?

A The production was simply lessened by some other influence there. There was never the same amount as when I first took charge of the water.

Q I am trying to find out what you got from that well.

A There wasn't the quantity of water there was in 1902.

Q How much do you say there was from that well no. 2 in 1902?

A Approximately 100 inches. That is, not direct from the well but from thewell and tunnel combined.

Q But from the well itself? Wasn't that well no. 2 always worthless?

A No, sir.

Mr. Haskell: Q Do you know whether any of the wells in the Eadie tunnel were capped during the winters of 1907, '8 and '9?

A The lower well was capped each year that I was on the service.

Q Do you know whether it was capped last winter or not?

A I do not.

Q The winter before or not? 1907 and '8?

A That I can't state. No, sir; I can't state.

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A. T. WRIGHT.

A. T. WRIGHT, heretofore sworn and examined, being recalled by plaintiff, testified as follows:

DIRECT EXAMINATION.

Mr. Britt: Referring to the plat which was shown to the last witness, purporting to be a tabulation of the water developments at the Red Hills at Cucamonga, Cal., state whether that was made by you or under your direction.

A It was made in my office and the quantities there were calculated from the figures turned in by Mr. Johnson, except in a few cases where I made the measurements myself and also tabulated them myself.

Q Do the tabulations correctly reproduce those figures turned in to you by Mr. Johnson and your own observations?

A Yes, sir.

Q You may explain what is shown by this tabulation.

A You mean the object of the tabulation?

Q No, no. I am not asking about that. The name of the observer appears in the left hand column?

A Yes, sir.

Q Where the name A. T. Wright appears there are you the person whose name is thus given?

A Yes, sir.

Q The next column to the right, is dates: What does that show?

A That shows the date of the measurement on the ground.

Q The next column is "weir no. 1."

A That is weir no. 1, which is the water going to the Cucamonga Water Company.

Q Situated where?

A It is at the mouth of the Lydia tunnel and it was at the division box between the San Antonio Water Company and the Cucamonga Water Company. The weir no. 2 shows the San Antonio Water Company-- that is the water flowing to their system.

Q Where is that situated with reference to weir no. 1?

A It is adjoining-- right together-- in the same box.

Q Do those two weirs measure all the water issuing out of that tunnel?

A Yes, sir. The next column shows the sum total of the water combined of the two weirs.

Q And the fourth column?

A The fourth column is shaft 7-B. It should be 7-A. It is just the elevation or depth as explained in the heading, depth from top of shaft to water at shaft 7 which is just below the Base Line on the 35-acre tract on the Cucamonga Water Company's property. It is a measurement made down to the surface of the water.

Q If there is any correction to be made there from shaft 7-B to 7-A--

A It is marked 7-B. You can call it that. But 7-A is what Mr Johnson turned in. It is the same place. There is no other 7-b. It is simply a name to designate it.

Q Where is it?

A It is on what is known as the 35-acre tract and it is marked on this exhibit 1 as "Well E" at that point. There is a shaft at that point and that is the place where the measurements were taken.

Q You had better change that with ink.

A Yes. It is the same point. It is arbitrary.

Q Where is that shaft situated with reference to the Lone Star tunnel?

A It is on the Lone Star, almost directly over the Lone Star tunnel, and reaches down to the water that flows out through the Lone Star tunnel by gravity through the 35-acre tract and comes out near the Old Settlers box on Hellman Avenue.

Q What do the figures in that column of the tabulation show?

A They show the distance from the top of the shaft, which is a cement pipe, to the water in the tunnel-- the elevation of the water in the tunnel. The reason those figures were taken was because the tunnel was bulkheaded at some time of the year and the water is backed up part of the time so as not to have a free flow.

Q So that the figures there do not represent the depth from the top of the shaft to the running water in the tunnel?

A No, sir; it was the elevation of the water standing there.

Q What does the next column show?

A In the next column is shown no. 4 and 4-A, which is a continuation of one of the other exhibits taken for four or five years, and shows the elevation of the water in the Radio tunnel at that point. That is, the depth from the top of the wooden box that was there to the surface of the water, and that has been bulkheaded all the time, and seldom reaches down to the level of the tunnel.

Q You mean it has been bulkheaded all the time?

A. I mean the last two or three years, since it was bulkheaded. The next colum is the water flowing at the mouth of the Y tunnel, which is a new colum from our other testimony, and shows that the water commenced flowing-- at least the first measurement we had-- March first, 1908, and the water continued flowing from the mouth of the "Y" tunnel till August 30, 1908.

Q. You say this is a new colum?

A. It is a colum that was not introduced in any of the other tabulations because there was no water flowing there.

Q. Do you know about what time the water first began to flow from the mouth of the "Y" tunnel?

A. Yes, sir; it was between February 23 and March 1st, 1908.

Q. And it continued to flow about till next September?

A. The last measurement that was flowing was August 30, and the next measurement was September 6, and there was none flowing. So it was between those two dates.

Q. What is the next?

A. Then there was none flowing until--it says flowing, and commenced flowing again about the first of February of this year and is nowflowing again. The different quantities are given here.

Q. The next colum is what?

A. Weir no. 5, which shows whatever measurements were made of the water that was pumped from what is called Well no. 9 at the head of theLone Star tunnel-- Cucamonga Water Company's water.

The next colum is a cement shaft north of the bulkhead on

the Ladie Tunnel, which shows the measurement from the top of the cement to the surface of the water, which is practically the same measurement as given before by 4 and 4-A a shaft. It would be the same water only 2000 feet apart perhaps. The next column is weir no. 7 which shows the total amount of water flowing at the mouth of the Lone Star tunnel at the lower level, which is at the Old Settler's division box. The next column is weir no. 8 which is all the water flowing at the division box by the reservoir above the winery. Half goes to the Cucamonga Water Company or Old Settlers and the other half to the Cucamonga Vineyard Company.

And then comes the eight columns next of the wells 1, 2, 3, 4, 5, 6, 7 and 8 of the San Antonio Water Company--

Q. Situated where?

A. Well, north of Base Line-- which show simply the dates when they were pumping or when not pumping. ~~XXXX~~ There is no quantity of water except one particular day., because we had no access to measure the quantity of water, but simply the dates when they were pumping.

Q. It doesn't show the quantity pumped but the dates when they were pumping?

A. The dates; that is all. We had no way of measuring. And beyond that is the Hollman well no. 2 which is at times that it was not flowing, showing the distance below the top of the casing. It is a continuation of the measurements made before. The next is artesian well no. 2, which is a continuation of the former measurements, and it is the distance from the top of the wooden shaft to the surface of the water in the artesian well in the 90-acre tract.

Q Those distances are given in what?

A Feet and tenths of feet.

Q It looks like feet and hundredths.

A Yes, sir; feet and hundredths. 40 hundredths is four tenths.

Q That is so with the Hellman well no. 2 and the Artesian well no. 2?

A Yes, sir; and also so with the shaft no. 4 and 4-A and the shaft no. 7-A.

Q These quantities of water in the various columns are given in what?

A In miners inches and hundredths of miners inches.

Mr. Britt: If we had our table which contains this tabulation-- the measurements which this tabulation is mostly a continuation of, I would have asked to have this marked as an exhibit connected with that in some way.

A I would like to ask the attorneys to have white prints made of this. I would like to have some prints of it. I haven't any myself.

Q I ask your attention to this chart called "Map of a part of Cucamonga showing contour lines and water developments at the Red Hills." Now in the first place I inquire if this map was made by you and under your direction?

A Yes, sir; it was made in my office.

Q It purports to be a map of part of Cucamonga: What is the meaning of the term Cucamonga in that sense?

A Well, a district.

Q Does it show a scale?

A Yes, sir; scale 500 feet to an inch.

Q And shows the locality of the Red Hill and the elevations of the land in the neighborhood-- including the elevations of the Red Hill?

A Yes; the contours below the Base Line were the same contours as shown on exhibit 1 and above the Base Line for a quarter of a mile above the Base Line, where levels were run in March or April of last year, and from that contours made to connect with the map in exhibit in this case. It simply showed the contours a quarter of a mile north of where the present map is.

Q Were the contours obtained by yourself?

A Yes, sir.

Q From observations made in the field?

A Yes, sir.

Q And on this map how have you plotted them?

A I have worked the levels of the other contour lines so that they are continuous with those contour lines shown on exhibit 1.

Q And is that map drawn on the same scale as exhibit 1?

A Yes, sir.

Q 300 feet to an inch?

A Yes, sir.

Q It shows the contours how much further north?

A A quarter of a mile. The distance of two of those block lines of the Homestead Association. It also shows the location of the Bourwine well and the Sunset wells and the Johnson well I think was located here, and it shows in addition the elevations as sent in to me by Mr. U. M. Johnson of May 11, 1908, of the elevations of water which I have cal-

culated above sea level to agree with the other elevations introduced last week.

Q. Where are those water elevations which you mentioned inscribed on this map?

A. Just adjoining the development of the San Antonio Water Company's wells; and also the other wells there put down. There are several of them, as the Old Settlers' well, I think, and I guess the Bourwine well is down there, or the Upland Water Company,-- and the wells that Mr. Johnson reported to me at that time are put down on this map.

Q. That is, his report--

A. His report of the measurements he made, and also in addition to Mr. Cousins' measurements and some of Mr. Trask(s of two years ago, of the different dates, that were introduced in evidence.

Q. The elevations here noted on this map of the several wells, or rather, the marks which indicate the wells on the map show such elevations at the various dates which they are represented on the map as exhibiting?

A. It gives the date and elevation above sea level. It is all the same datum plane.

Q. Take the Haskell well for example.

A. Here it reads May 11, 1908/ elevation of water 1375.80. May 10, 1907, water 1359.75, showing a difference of 16 feet in a year's time. And then on this well no. 8, well no. 7, it also shows practically the same difference. May 10, 1907, 1362.86 and May 11, 1908, elevation 1375.10.

Q. You placed on this map the various wells which are found also in exhibit 1?

A. Yes, sir; I think they are all placed on the map. I placed all the wells that were introduced in evidence that I remember of, and it was made intending to show the information that was given in testimony mainly of the additional information of the contour lines and the new measurements in the wells.

Q. Does it show the location of the Eadie tunnel?

A. Yes, sir.

Mr. Britt: We offer this map in evidence at this time, to be marked plaintiffs' exhibit in its order.

Mr. Britt: Now in the fourth amended complaint on the part of plaintiff it is alleged that sundry wells and tunnels are situated on certain described tracts of land as, for instance, that the San Antonio Water Company's wells 1 to 8, I think they are numbered, (which includes the two Haskell wells and the Rubio well and five others) are situated on a certain tract of land, and then that the Eadie tunnel and certain wells are situated on another. And I would like to inquire if there be any dispute about those things. I do not desire to ask Mr. Wright concerning them if it can be agreed that they are correctly located on the pieces of land described by metes and bounds,-- the several wells and tunnels mentioned in the complaint.

Mr. Joliffe. They are on a piece of land which adjoins section 4, but some of the wells are a long distance from it.

Mr. Britt: I am not saying anything about the distance, but merely that those wells are situated on the particular tracts.

Mr. Joliffe : They are on lands belonging to the San Antonio

Water Company.

Mr. Britt: The parcels described in the complaint?

Mr. Jolliffe: I presume that is correct but I don't know it.

Mr. Britt: We had better take it up with you later on, and I will not interrogate the witness on the subject now.

Q. Mr. Wright, referring to this tabulation of measurements of water developed at the Red Hills ~~xxx the~~ at Cucamonga, California, containing the report of the observations from January 5, 1908, until February 28, 1909, have you examined those figures with a view to observing if they corresponded -- or the relationship, rather,-- between the time of the pumping of the San Antonio Water Company's wells and the elevation of the water in the "Y" tunnel or any other wells?

A. Yes, sir.

Q. What do you find?

A. I find that soon after they commenced pumping the water dried up in the "Y" tunnel, and then began to flow down below, some distance below the top of the pipe line, and the lowest it reached was 5.8 feet below the top of the iron pipe of the well-- the 15-inch well; and when they ceased pumping it began gradually to rise until in February of this year it began to flow again.

Q. What inference do you derive from those circumstances?

A. That pumping the wells affected the flow of the water in the "Y" tunnel.

Q. In what way?

A. It decreased the quantity of water there. It lowered the plane.

Q. Do you know anything about any pumping of wells to the

west of the Red Hill in the Ladis tunnel or wells discharging into the Ladis tunnel?

A Not for some four years past.

Q Has there been any pumping there during that time?

A For four years? No, sir.

That tabulation 11 will show the last pumping that was done there. That was from the wells no. 14. And it shows that it drops 60 or 70 inches when they stop pumping. The flow of the tunnel drops all in one day.

Do you know anything about the capping of wells which discharge into the Ladis tunnel? Have you made any observations on that subject?

A No, sir; I didn't know there was any capping of wells there except the well that we call weir no. 3, a small well down in the cement shaft. I think it was capped at one time, but there could be no capping for the last two or three years and I don't think there is any, for I have been measuring water since 1905. I don't know of anything being capped, but I won't state that fact of my own knowledge.

Q How often have you observed the wells?

A Pretty carefully. Since 1904 myself or some of the men were there every week almost.

Which of the wells have you observed carefully and at frequent intervals during that time?

A Well, it would be the flow of the water, more especially, than the wells themselves. I didn't go down to the wells by any means. That was 80 to 100 feet below the surface.

Q Do you know the water system of the Cucamonga Water Company?

A Yes; pretty well.

Q When the water flowing out of the Ladie tunnel escapes from the weirs at the mouth of the Ladie tunnel (I think you call them weirs 1 and 2 in this tabulation, have you not?

A Yes, sir.

Q When the water is discharged over the weir no. 1 how is it received into the system of the Cucamonga Water Company? Through what sort of a conduit?

A A pipe line; a cement pipe line. I think it was some years past all gone into what is known as the Ladie reservoir. There may have some of it gone to the west of that, but most of it goes down to that reservoir first.

Q From the reservoir where is it taken?

A Taken through the pipe line to irrigate the various pieces of land belonging to-- well, it used to be the Cucamonga Fruit Company and the Settlers.

Q Situated where?

A South and west mostly. South of the main body. But they took it to the east and west both of the mouth of the main tunnel.

Q Did any of it reach any point where it could by gravitation, percolation or otherwise replenish the Cucamonga springs?

A No, sir; the mouth of the tunnel itself is as low as most any of the springs. Where it is turned onto the surface for any irrigation it is entirely below the springs.

Q How about the creek or stream called Cucamonga Creek about which testimony has been given? Is there any chance for any of it to reappear in that creek?

A Not within half a mile of the source of the water of the springs. It could come out a mile below there in the sandy wash, possibly, if there was enough of it.

Q That wash, however, is dry any part of the Sunnyside Creek except in times of flood?

A None except in times of flood.

Q I believe it has appeared already that the slope of the land from the mouth of the Lafis tunnel is to the south or southerly.

A Yes, sir.

Q Where is that reservoir situated that you spoke of with reference to the mouth of the Lafis tunnel?

A About 600 feet southeast a trifle. It is shown on exhibit no. 1 as reservoir no. 4.

Q After the water escapes from the tunnel and passes over the weir no. 1 is there any part of it that then finds its way into the system of the Ontario Power Company or the San Antonio Water Company?

A I don't think any of it that passes over weir no. 1 does. Not to my knowledge.

Q The division of water between those companies is made above the weirs or at the weirs?

A Well, it is made at the weir. There are two weirs side by side., flowing over the same elevation.

Q Do you know the situation of the water plant or system of the Sunset Water Company?

A Yes, sir. I don't know so much about their distributing or just where they distributed to.

Q No; but their source of supply.

A Yes, sir; I think it is located on that exhibit. They have two wells that they pump from.

Q Are they shown on this plat here-- the last one introduced?

A Yes.

Q The Sunset Water Company obtains water from what source, tunnels, springs, streams or what?

A From two wells located in lots 4 and 5 in block 8 of the Cucamonga Homestead Association.

Q Indicated on this map last introduced in what way?

A One is marked Sunset well no. 1 and shows the elevation of the ground and the water at a certain date, and the other is Sunset well no. 2.

Q And in what manner is the water obtained from those wells?

A By pumping.

Q And in what manner is it transported for use?

A By a pipe line to the different consumers.

Q Those wells are not connected with any tunnel to your knowledge?

A No, sir.

Q And when not pumped do they flow in any way?

A They don't flow over the surface.

Q They don't flow at the surface?

A No, sir. At this date given here the water was 91 feet below the surface, on May 11, 1906.

Q What was the depth to the water in the other one?

A I haven't got the depth oto the water in the other one. It was shut up and locked and it wasn't measured that day.

Q How does it compare, if you know, approximately?

A I don't think I could make any statement.

Q How many of these Sunset wells are there?

A Two.

Q Are there only two?

A Of the Sunset wells, that is all I know of.

Q And they are both marked respectively as Sunset well no. 1 and Sunset well no. 2?

A Yes, sir.

Q What is the source of supply of the Cucamonga Water Company?

A They have a well in lot 6, block 7 of the Cucamonga Home stead Association delineated on this exhibit and marked Hermosa well.

Q Elevation ground 1507. That is the elevation of the surface of the earth?

A Yes, sir.

Q How is the water obtained from that well?

A By pumping.

Q When it is not pumped does the water flow at the surface or escape in any other manner?

A It does not flow to the surface and does not escape for use in their system in any manner.

Q There is no tunnel in connection with the system?

A No, sir; no connection except by pumping.

Q What was the depth to the water in that well when you made your observation?

A It is not given.

Q Do you know approximately?

A No, sir; but it is over 100 feet. I know that much.

Q J. J. Atwood has a well, has he?

A. I don't think I knew of any J. J. Atwood well.

Q. Do you know of the water plant or system of Samuel Johnson?

A. Yes, sir.

Q. What does it consist of?

A. It consists of a pump and a well located in the northwest corner of lot 8, block 8 of the Cucamonga Homestead Association as delineated on this map.

Q. Is it marked on the map to which you refer?

A. It is marked "Johnson Well. Elevation ground 1449, May 11, 1908 elevation water 1356."

Q. 1356 feet?

A. Yes, sir. There is a difference between the two, so that the water would be 93 feet below the surface.

Q. How is the water obtained from his well?

A. By pumping.

Q. When it is not pumped does the water escape from the well?

A. No, sir; it does not escape from it at the surface; not for use.

Q. Do you know anything of the plant of the Upland Water Company?

A. Yes, sir.

Q. Where is it situated?

A. In the northwest corner of lot 7, block 16, Cucamonga Homestead Association tract.

Q. What does it consist of?

A. It consists of a bored well and a pumping plant, and is sometimes designated as the Routwine well.

Q. Any other way of getting the water from the well save

by pumping?

A No, sir.

Q When it is not pumped does the water escape from the well?

A No, sir.

Q Can you give the location?

A I did give the location. It is located on this exhibit and I called it off.

Q Are these several wells and plants that you have mentioned within the confines of the territory delineated on this map, the last exhibit?

A Yes, sir; they are all shown on this exhibit.

Q State if they are shown with approximate accuracy as to location?

A They are accurate.

Q And the scale being applied to the map will show the distances from the Radio tunnel and from the Cuchuma Springs and other localities indicated on the same map?

A Yes, sir.

Q Do you know whether water is obtained from the Buttet Water Company's wells at any period of the year?

A Yes, sir; the chart that Judge Schilley has shows at what times they were pumping this past year.

Q They did pump some water?

A Yes; they pumped water last summer.

Q Does the chart show the quantity?

A No, sir; I have no way of measuring.

Q Is any water taken from the Parsons Company's wells for any purposes-- industrial purposes?

A. I don't know.

Q. You have never seen those wells or never been on the ground when the wells were pumped?

A. No, sir.

Q. What do you know about the Samuel Johnson well?

A. I never was on the ground and saw that pumped.

Q. It is equipped with a pump?

A. Yes, sir.

Q. Has he a distributing system of pipes or flumes or ditches connecting with the well?

A. Only from what he told me.

Q. What did he tell you?

A. That it was used for his own property-- for his own ground only.

Q. The Upland Water Company: its wellx is sometimes referred to as the Lourwine well. Is that equipped with a pump?

A. Yes, sir.

Q. Do you know whether water is pumped from that for irrigation or other purposes?

A. Yes, sir; it flows in a pipe line, presumably to Ontario, and utilized there.

Q. The Atwood well, I believe you say you know nothing about.

A. I never heard of it.

Q. I believe there was a piece of land containing the Rubio well sold for passed to the possession of the party named Atwood. Do you know the Rubio well?

A. Yes, sir. (Reporter reads question and answer from lines 18 to 21.)

Q. The quantity I presume is unknown to you?

A. I have had measurements twice over a year ago. It is between 20 and 30 inches, so far as quantity went.

Q. This Rubio well has never been measured by you, I think?

A. I don't think I have ever seen them pumping there personally into their system. I don't know that I have.

CROSS EXAMINATION.

Mr. McKinley: Q. There are a few questions that I want to ask about other matters. Mr. Wright, in your testimony before you referred to the "Y" tunnel being put down by agreement or understanding with Mr. Hellman in behalf of yourself and the other owners of the property: Were there any written agreements between your company and Mr. Hellman as to the development on that side?

A. No, sir; not to my knowledge.

Q. One of those wells was put down about 1899 or 1900 by an agreement between some of the Class B people as they were called at Cucamonga and the water company and the owners of the land, was it not?

A. I think both wells were put down under the same agreement that Mr. Hellman for the land owners was to pay half of the bill or 3/8, I am not sure which, and the Class B were to pay a certain pro rata, which I have forgotten how much, and the Water Company and possibly the old settlers--Class A.

Q. Was there any written agreement?

A. To my knowledge there was not. There might have been with the Class B people.

Q. With Hellman, was there?

A. I don't think so.

Q. The Lucia tunnel was put in, the first portion of it, by the Cucamonga Fruit Land Company, was it not?

A. All of it up to 1900, and possibly a year later.

Q. Was L. W. Hellman connected with the Cucamonga Fruit Land Company?

A. He was one of the stockholders and possibly president. He was one of the directors.

Q. During some of the time he was president?

Mr. Britt: We object to the inquiry as irrelevant and immaterial.

Mr. McKinley: It is probable that he was the owner up to 1895 when he conveyed to these companies; and we desire to show his relationship to the developments that were made there, and it is consistent up to that time, at least.

Mr. Britt: There is no complaint made here about any acts prior to 1895 or for many years afterwards.

Mr. McKinley: The theory of our case is and we expect to show that the things that produced this condition were done prior to 1895, and we are entitled to go into the case and show ~~it was not~~ everything that occurred there and what was done in regard to it and what produced it and the result produced and that it was not our fault.

Mr. Britt: And I object further on the ground that it is not proper cross examination.

Mr. McKinley: It is not cross examination as to this today, but we have a stipulation under which we can recall witnesses for cross examination, and this witness is here, and I thought I would save time by examining him now.

The Court: This refers to a new defendant.

Mr. McKinley: I am very new myself and two of my clients are new.

Mr. Britt: Have your clients made any issue on the subject?

A. They make as plain an issue as the others.

Mr. Britt: In any event, the testimony is irrelevant, immaterial and incompetent, entirely relating to titles and not proper to be shown by parol evidence.

Mr. McKinley: Counsel has done that already. I am not showing title.

Mr. Britt: And also relating to matters which were agitated many years-- the first enormities of the company-- by the defendants in this case.

~~Mr. McKinley~~

Mr. Waters. And it is objected to by the Old Settlers' Company as incompetent and not the best evidence.

The Court: Sustained. Defendants except.

Q. About when did the Sacramento Fruit Land Company cease to work on the Radio tunnel, Mr. Wright?

Mr. Britt: Objected to as irrelevant and immaterial.

The Court: The objection is overruled. Plaintiffs except.

A. It must have been some time in 1902, probably. They practically were working up to the time they sold their interest. They didn't accomplish much in the last year or two.

Q. How far had it been completed in 1900?

A. Well, it wasn't up to the end of the 90-acre tract. It was in the upper portion somewhere and there had been no work done there for six years or five years on it.

Q. The work that was done was in the early history?

A. Yes, sir; in 1896 or 1900.

Q Referring to the table introduced here, Mr. Wright, you drew a conclusion that the pumping was affecting the waters shown at weir no. 8, as I understand it.

A The "Y" tunnel.

Q Weir no. 8 also.

A I didn't make any statement as to that.

Q You didn't make any statement as to weir no. 8? Your statement is entirely as to the "Y" tunnel?

A That is what I stated. I don't know whether I know what the figures show about the other without comparing them.

Q Your reference was simply as to the "Y" tunnel?

A Yes, sir; I was quoting from the "Y" tunnel.

Q Did you make any measurements other than the measurements contained -- or have anyone else make any measurements-- other than those contained on this plat of the waters that were being taken in that ~~xxxxxxxxxx~~ region?

A No, sir.

Q You made no measurements ?

A Mr. Johnson made a measurement of the elevation of water shown in the well.

Q But no measurement of the water taken by the Sunset well?

A Not as to quantity.

Q You did get later the idea that the Sunset well was pumping—

A We had no way of measuring the San Antonio Company's wells or the Sunset well or the Barnosa or the Johnson wells because they were all shut up so that we couldn't have access to them.

Q What is the effect of the sunset on the water of the "Y" tunnel?

A. It generally decreases.

Q. At what period?

A. Along in the middle of the summer it begins to fall slightly as the measurements will show better than any other way, and they are introduced here in evidence.

Q. Will you describe what development the Cucamonga Water Company has made, what construction has been made, other than the tunnel which is shown on the map here which I think you havedescribed before?

A. Within the last two years?

Q. Yes, sir; well, since 1899.

A. Stowell dug a tunnel through the 55-acre tract and when the Cucamonga Company purchased that they continued it, and about three or four years ago made a connection with what was known as the Lone Star tunnel at a lower elevation of over--50 or 60 feet below.

Q. And that tunnel starts near the place where the figures are printed on section 5?

A. Yes, sir; the Old Settlers' box, practically.

Q. And continues to this 55-acre tract?

A. Yes, sir;and on through lots 6 and 11 of the Cucamonga Homestead tract.

Q. Were any wells put down along that tunnel? A. I think one well only in the last ten years.

Q. Were the wells being pumped by the Cucamonga Water Company during the period that the tabulation shows?

A. The tabulation shows that well no. 9 at the end of the Lone Star tunnel was pumped.

Q. That is marked no. 6?

A. Yes, sir; on exhibit 1.

Q Were there any other wells being pumped by the Cucamonga Water Company?

A It might show that they were pumping occasionally at a shaft, marked "J" in lot 12, on Exhibit No. 1, as there is a plant there, and that was pumped occasionally, but it should show there in the pumping. Mr. Trask corrects me, and says it is at "K" that the plant is.

Q On this tabulation - Just examine it and see.

A Where it says on this tabulation 65-acre tract, is at the point "K" on Exhibit No. 1; whenever it says pumping there, it is at that point K.

Q Were there any other wells being pumped on that side by anybody?

A It shows,- the record there,- that the Sunset well was being pumped some of the days; I don't think the Old Settlers' well pumped at all the past year.

Q No, I understand not. Was the Hermosa well being pumped?

A Not to my knowledge.

Q You don't know whether it was or not?

A No, sir.

Q And the Johnson well, to which you referred was that being pumped?

A The Johnson well was being only pumped for his own use, on his land.

Q Now, does this tabulation show the water that was being taken out of the Cucamonga Tunnel?

A Yes, sir.

Q Which column is that?

A Weir 7,- do you mean the Lone Star tunnel?

Q Yes, sir?

A Weir No. 7.

Q Now, what does weir No. 5 refer to?

A That refers to the water that was pumped at the end of the Lone Star tunnel, and was called No. 9.

Q Corresponding to this 9 here?

A When 9 is being pumped water naturally flowed over weir No. 5.

Q Then the absence of water as shown in that column, in weir No. 5, on days when well No. 9 is shown as pumping, is simply due to not making the measurement?

A Simply due to not making the measurement.

Q Because it must necessarily be flowing over there, if it was pumping and getting any water?

A Yes, sir.

Q Your table shows that on May 10, there was 28.46 inches flowing in the Y tunnel, and that upon the same day well No. 9 began pumping, and that on July 12, that well No. 9 was pumping continuously until July 12, and that no other well was being pumped during that period, and that the flow then had been reduced to 18.74 inches in the Y tunnel: Do you attribute that to the pumping of well No. 9?

A Very little of it, but it may be some; and also it may be because of the coming summer.

Q Do you think the decrease was practically a natural decrease then, on account of the weather?

A I think it certainly does decrease when the summer comes. Past records show that up.

Q To which do you attribute the decrease from May 10 to

July 12, the weather or to the pumping of well No. 9 or to both?

A Both.

Q Do you think that the well No. 9 had a serious influence on the reduction of the water?

A No, sir.

Q Then you attribute practically all of the decrease to the natural conditions of the Summer?

A A good deal of it I do; the other tables that are in evidence here have not shown that well No. 9 in the past has seemed to change the water in the Hellman well No. 2, is the reason I deduce that fact.

Q You think natural conditions may account for that decrease

A It might account for a majority of it.

Q Since well No. 9 has been pumped has the Y tunnel had any water in it, so that you could make observation?

A You could make observation on the level of the water whether going up or down.

Q There has not been any water in the Y tunnel until a year ago last summer?

A We have kept measurements for five years, from the top of the pipe to the level of the water; it has been as low as 35 feet below the top of the pipe, and this last summer it flowed over the top of the pipe again,- this spring it flowed over the top of the pipe, and at present it is flowing over the top of the pipe and furnishing water.

Q To what do you attribute the increase of the water in the Y tunnel during the past two years?

A To the better winters, to the decrease in the pumping, ,

and to the bulkhead over on the west side, and the bulkhead over on the east side might have had something to do with it, probably not as much.

Q Has there been a decrease in the pumping?

A Yes, sir; less water pumped last year.

Q Than the year preceding?

A No, not than the year preceding; but than two years preceding.

Q What bulkhead do you refer to?

A To the bulkhead in the Y tunnel, and the bulkhead on the 35 acre tract.

Mr Britt, Q You said Y tunnel just now.

A I mean Eady tunnel.

Mr. Mc.Kinley, Q And to the bulkhead in the other tunnel on the 35 acre tract?

A There is a bulkhead that they utilize there.

Q And you think the increase is partly attributable to that?

A I think that assists to raise the water plane and that means getting water.

A That development had its tendency to decrease the water in the Y tunnel before? the bulkhead was put in?

A The bulkhead was put in - Which development do you refer to?

Q That tunnel that is bulkheaded of the Cucamonga Water Company.

A We have never been able to trace any close connection from the Lone Star or the 35-acre tract, with the Y tunnel.

Q If by bulkheading that tunnel you benefitted the Y tunnel

don't you think by opening it you injured it?

A To one extent the same as the other.

Q Do you remember when the Lone Star tunnel was put in?

A Do you mean when it made the connection?

Q When it was driven there, when it was driven a considerable distance and began to produce water?

A Yes, sir.

Q About when was that?

A It was started in 1890,- probably 1889; but I think in 1890.

Q Do you mean 1890 or 1900?

A I mean 1900; I mean 1899 or 1900; I think Mr. Stowell started it.

Q What was the condition of the Y tunnel as to having water at that time?

A It had water; some 42 inches, to be exact, was measured by Mr. Cook and myself that Spring in April or May, 1900.

Q How soon after that did it cease to have water?

A I think the testimony shows it was about two years later before it dried up entirely. I never had the exact date.

Q Had there been water in the Y tunnel during all of the preceding summer of 1899?

A There had been water; it never had been dried up before since it was dug.

Q How much had it been down to in the preceding summer?

A I couldn't tell you; the testimony is all in here.

Q It had been very much down?

A Lower than 40 inches?

Q Yes?

A In the Y tunnel?

Q Yes, in the Summer of 1899?

A I doubt it; I don't think the records will show so.

Q Well, it is a matter of record here. I wasn't here to hear the testimony, and probably I wouldn't have remembered it if I had.

Q By whom have you been employed in this case? by the plaintiffs or Mr. I. W. Hellman?

A By the plaintiffs.

Q Have you had any connection with Mr. Hellman at all?

A Never mentioned the subject to him. I say by the plaintiff: Mr. H. W. O'Melveny employed me. I presume it was the plaintiff.

Q Well, we will assume that he is. Did you ever have any consultations with Mr. Hellman, with reference to the making of the developments there, on either the east or west side?

Mr. Britt: Objected to as irrelevant, immaterial and incompetent, and not proper cross examination.

The Court: Sustained.

Mr. Mc.Kinlay: Exception.

Mr. Haskell, Q In your opinion the bulkhead there, preserved some water, since it was located and put in operation, hasn't it?

A It helped raise the water-level of the whole district, no question at all.

Q If the wells which are connected with the Eady tunnel and flow into were capped in the non-irrigating season, would it or would it not still further preserve the waters and raise

the water-level there?

A It would shut off that much water that comes up from the lower springs, and consequently must fill up some more, or force the water more or less. There is now between one and two hundred inches escaping from the Eady tunnel.

Q If the wells that empty into this Eady tunnel were capped it would check that water in large part wouldn't it, in your opinion, if not altogether?

A I think it would keep the water down in the wells and not let it escape, and make the surface water or the water that flows above the level of the tunnel do that filling up of the ground, and preserve that for future use, perhaps.

Q You say there is 100 inches of water escaping there: Do you know whether that has continued throughout this last season or not?

A This chart shows it right along,- that it is 100 or upwards all winter.

Q Do you know where that water escaped to and where it went to?

A Why, the different appropriations are shown there; whether it was utilized I can't say, except generally, there has been some flowing across the road; when I drove across going from Ontario to Cucamonga, there has been some going across the road that came from this source; that was Sunday.

Q Into the wash?

A Yes, sir; into the wash.

Q About how large a quantity, in your estimate, as you observed it?

A I only observed it; 40 or 50 inches possibly

Q That is the same point that was testified to in the former hearing of this case, that water wasted into the wash?

A Yes, sir; it is the same wash.

Q And there is no place where that water is taken up, or used for any purpose whatever to your knowledge is there?

A Not to my knowledge; it is in the wash.

Q If there was such a place you would be likely to know it wouldn't you?

A You might call it use, because it is flowing through a eucalyptus grove that has been planted during the last few years, right in the neighborhood there, but it is not utilized there, so far as I know.

Q Not spread out for irrigation?

A No, sir.

Q Just passing through the grove?

A Yes, sir.

Mr. Mc.Kinley, Q During the winter seasons when you first knew that country the water went across there?

A Yes, sir.

Q In times of rain?

A Yes, sir.

Q Are you sure as to where that water comes from that runs across the road, as to whether it comes on the surface or out of the tunnel?

A It comes through one of the pipe-lines leading from the Eady tunnel, going toward Ontario, and it is let out either at or near the box that used to be a measuring box, about a quarter of a mile or half a mile west of the mouth of the

Eady tunnel, near that point?

Q When was it you saw it running there?

A The last time was last Sunday.

Q When?

A Day before yesterday.

Mr. Britt, Q Had you seen the water escaping in the same manner on previous occasions?

A Yes, sir.

Q For how many years has that been going on?

A Do you mean escaping from that same pipe?

Q Yes, sir?

A Why, I think that every time I go out there in the winter, when it is not irrigating season, I have seen water running across, except as to dates,- I would have to look up dates, to see whether I have any notes of it or not.

Q I was inquiring generally: How many years has your observation - -

A Six or eight years, because the pipe has been laid about eight years.

Q Those are the pipes that have been previously testified to in the case, as carrying water of the San Antonio Water Company, and Ontario Power Company, are they not?

A To Ontario Colony.

Q In these columns on this tabulation of measurements which are headed respectively Shaft 7A" and Shaft 4 and 4A,- what do the figures represent? The figures in the columns?

A They represent the distance in feet from the top of the shaft to the surface of the water.

Q Do these shafts connect with the tunnel?

A They connect with two tunnels; yes, sir; one is the Cucamonga Water Company on the east, and the other is the Eady tunnel on the west; and both tunnels are bulkheaded so that the distance varies as they draw the water.

Q The shaft No. 4A is the Cucamonga - -

A No; 4 and 4A is the Eady tunnel; that is the point of the connection with the water coming from the Ontario Power Company's lands, into and connecting with the tunnel, at the northwest corner of the 90 acre tract.

Q Well, are shafts 4 and 4A in the same tunnel?

A Yes, sir; it is the same shaft, really; it is 4 and 4A. It is one shaft, but there was two weirs down beneath; that is the reason we commenced calling it by that name.

Q That is a single shaft?

A A single shaft.

Q There were two weirs at the bottom of the shaft?

A Yes, sir; one to let the water in from the Cucamonga wells on the east, and the other from all the San Antonio Water Company on the north, and there were weirs to measure them separately at that point.

Q Has the bulkheading of the tunnel caused the submergence of those shafts?

A Yes, sir.

Q I mean of those weirs?

A Well, of the weirs I mean.

Q They have become water-logged?

A Yes, sir.

Q And the water has risen in the shaft above them?

A

A Yes, sir.

Q And those figures indicate the height to which it raised below the surface of the ground?

A Below the surface of the top of the shaft, the board shaft, which is about two feet above the ground. Sunday they were practically about 60 feet deep, the water was, over the weir.

Q Do you mean last Sunday?

A Yes, sir.

Q That is the weirs were 60 feet below the surface of the water in the shaft?

A Yes, sir; sixty feet.

Mr. Waters, Q Was that the effect of the bulkheading?

A Yes, sir.

Q And yet you say there was 100 inches escaping through the bulkhead?

A Yes, sir; over that. I think it shows about 120 or thereabouts. The water that was measured at weirs 1 and 2 was the water measured at that tunnel and was escaping. They probably opened the gates and let it go.

Mr. Britt, Q The gates in the bulkhead?

A The gates in the bulkhead. I wish to state that the water in the bulkhead is standing as high as it can stand now without breaking out, because it is practically at the surface in one in the tunnel.

Mr. Haskell, Q Breaking out where?

A Breaking out at one of the shafts,- one of the shafts about five or six hundred feet above the mouth of the tunnel, it stands very near the top surface of the ground now

Mr. Waters, Q Do you know what the difference in level is, between the present level of the water, and the level of the water at the Cucamonga Springs?

A I think they are all shown on the map; I think the data is all on the maps of that.

Mr. Britt, Q What is the situation of that weir 7A or shaft where weir 7A is situated, in this Cucamonga tunnel? Point it out if you please on that map Exhibit 1?

A I locate it just below the Base Line in the northwesterly corner, almost, of the 35-acre tract, just below the Base Line road.

Q It seems to me that that Cucamonga Tunnel, that term Cucamonga tunnel is new in the case: I don't remember of it being called that before.

A It might have been called the 35-acre tract piece; it belongs to the Cucamonga Water Company now

Q How long has the Cucamonga Water Company had control of it

A It must be some five or six years; they bought it from N. W. Stowell, all his rights, possibly six years ago.

Q These maps, contours, seem to indicate an elevation of land between the Cucamonga Springs, and the cienegas there in the neighborhood, and this tunnel to which you have just now pointed: Is that the fact? Is there a hill in there?

A There is a hill, and running northwesterly, as shown by the contours; it correctly shows the line of the ground.

Q The slope of the ground there, on the west side of the hill, is in the direction of the Y tunnel is it?

A Yes, sir.

Q What is the nature of that hill, the ground? Is it stone or what? What is the character of the soil?

A Well, it is stony and clay on the surface, and sticky in wet weather, almost boggy; it is a heavy soil; right on the top it is stony also; there are so many rocks and stuff in there.

Q Does the ridge extend back toward the northwest from the point of the hill?

A There is a ridge extends northwesterly, but it loses its prominence as it goes northwest; it becomes nearer a part of the plain; but you can see on the ground,- you can find it with your eye.

Q As you go toward the northwest does the elevation rise or diminish, the elevation of the ground?

A Why it raises anywhere, if you go north far enough; but is nearly level on the top of the hill for a quarter of a mile and then begins to raise.

Mr. Mc.Kinley, Q The water runs across the road on the east side, too, doesn't it, every winter?

A Yes, sir; it was Sunday.

-o-

C. M. JOHNSON.

C. M. JOHNSON, previously sworn, being recalled by plaintiffs, testified as follows:

DIRECT EXAMINATION.

Mr. Haskell, Q During the last winter season have you seen any water wasting from the Eady tunnel?

A Yes, sir.

Q Where?

A Well, I have noticed it in crossing the bridge, going to Uplands from my place.

Q From that pipe line did it escape.

A The San Antonio Water Company's pipe line.

Q Leading from the Eady tunnel?

A Yes, sir.

Q How often have you seen the water in that condition and at that place?

A Several different times.

Q During the rainy season?

A Yes, sir.

Q Could you estimate the quantity approximately?

A Well, something over 50 inches at a time.

Q Do you know whether that water was taken up or used for any purpose or not, after it escaped into that wash?

A None whatever.

CROSS EXAMINATION.

Mr. Mc.Kinlay, Q When was this?

A I couldn't state the exact time; last Sunday on the back of my place there was a slight flow; that is about three-eighths of a mile below the San Bernardino Avenue.

Q There wasn't anybody using any water for any purpose at that time was there?

A No, sir.

Q Whereabouts was it you saw it?

A I have seen it at different points.

Q Well, last Sunday where was it you saw it?

A Well, there was some water on the back of my place I believe; I don't know what source that came from; ofcourse there was water coming down there.

Q Where else did you see any?

A Well, there was some at the bridge, the bridge there below the sand-box, or the box that the San Antonio has for returning water.

Q Did you see where it came from?

A Yes, sir.

Q Where did it come from?

A It came from the box connected with the pipe.

Q Coming out of the box through the pipes?

A Yes, sir.

REDIRECT EXAMINATION.

Mr. Haskell, Q What box?

A A box connected with the San Antonio Water Company's pipe line.

Mr. Britt, Q Is that the box about half a mile west of the mouth of the Eady tunnel?

A I presume about that; yes, sir.

Q What is the nature of the ground where that box is situated?

A It is washed ground.

Q What do you mean by washed ground?

A Well, sandy and rocky.

Q Any cultivation?

A No, sir.

Q Any brush?

A Brush on each side of the wash; yes, sir.

-o-

Mr. Haskell: I would like to offer in evidence the original complaint in intervention, with the filing endorsement of the Clerk thereon.

The Court: What for?

Mr. Haskell: The statute of limitations is here in question and the second complaint is a substitution for the other.

The Court: That doesn't make any difference. The Court will take judicial notice of the filing of the complaint.

Mr. Haskell: We offer it in evidence.

The Court: There doesn't seem to be any objection to it.

Mr. Mc.Kinley: It is simply to show when it was filed, not proof of its contents.

Mr. Haskell: No, we don't care about proof of its contents; we want to show when it was filed.

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Here the Court takes a recess until tomorrow, Wednesday, March 3rd, 1909, at ten o'clock a.m.

-o-

J.W.McKINLEY.

IN THE

Superior Court

OF THE

County of San Bernardino

State of California

Cucamonga Vineyard Company, et al., Plaintiffs vs. San Antonio Water Company, et al., Defendants	Vol. 22. Wednesday, March 3, 1909

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I. BENJAMIN, Official Reporter

Wednesday, March 3rd, 1909. Twenty-second day.

L. F. WRIGHT.

L. F. Wright, re-called for plaintiff, testified as follows:

Direct Examination.

Mr. Britt: Q You heard the statement made here yesterday by Mr. Johnson, concerning the capping of one of the wells of the Cucamonga Water Company which discharges into the Cadic tunnel, did you?

A Yes, sir.

Q Do you know the locality of that well, the quantity of its discharge and its history?

A Yes, sir.

Q When was that well bored?

A That was one of the early wells, bored by the Cucamonga Fruit Land Company, about the time Mr. Stowell commenced to improve the tunnel in 1896, I think it was. That is, well No. 3, or weir No.3, as we have it on our tabulation.

Q What was the flow of that well?

A The largest measurement since 1894 was 6 inches and something. It was in the tabulation of exhibit 3.

Q And the largest?

A And it ran down to 2 or 3 inches, and we stopped going down the shaft to measure it, because it was 60 feet down to go to measure the small amount of water.

Q The flow of that well at the time it was capped was about what amount?

A It could not have exceeded 6 inches.

Q Do you know whether it was capped at the time it fl

6 inches?

A No, sir, it was not.

Q At the time it was capped how much was flowing?

A When it was capped?

Q Yes.

A I have no way of telling at all. I don't think it flowed much if any.

Q Of course, if it was capped it should not have flowed any. But what amount did it flow without the cap?

A From 6 to 7 inches was the highest measurement that we had during those first measurements that we made. When it was first bored, it flowed more. It was called a 10 or 15 inch well at that time, according to my memory.

Q And it declined?

A Oh, it declined and ran down so that the flow was six inches in 1904, and it ran down so low that we stopped measuring it.

Q Now, the largest well of the Cucamonga Water Company was connected with the Ladie tunnel at what time?

A The final connections were made in January or February 1904, that they finished the tunnel and got the weirs in there.

Q 1904?

A Yes, sir. There had been water connected before that some time, in the fall, or summer before, but they hadn't finished the tunnel on the grade line, and they were siphoning for awhile and fooling around.

Q What had been the amount of the discharge of that well previous to connecting it with the tunnel?

A I have with me no record of the exact measurements, only I know it was considered the best well that was ever bored by the Water Company.

Q Which water company?

A The Cucamonga Water Company, or the Fruit Land Company, either one, and it was said to be called a 100 inch well. That is, it was called a 100 inch well.

Q Before it was connected with the tunnel what was the discharge from that well?

A Into the tunnel, do you mean?

Q Yes?

A I have no record to tell exactly. It was siphoned over there, and worked in that way for some little time.

Q How long a time previous to its being connected finally with the tunnel?

A They were working it in the neighborhood of a year all told, trying to get the connections.

Q Was the flow as great before the connection with the tunnel as it was afterward?

A No, sir.

Q Are you able to say approximately what was the difference?

A I have no measurements of the exact amount before.

Q Yes, I know, but can you give any approximation?

A Only by guess work.

Q Well, we don't care anything about a mere guess.

A Well, I have no way of approximating, because I did not make any measurements.

Q Well, that larger well of the Cucamonga Water Company,

before it was connected with the tunnel was an artesian well, was it, in the sense that it flowed out at the surface of the ground?

A The larger well of the Water Company?

Q Of the Rucamonga Water Company.

A No, sir, that never flowed over the surface of the ground. It came close to the surface, but did not flow over the surface.

Q There was then, no waste of water from that well before it connected with the tunnel, before it was connected with the tunnel?

A No, sir.

Q And that, you say, was in 1904?

A Well, I say it was finished, the connection with the tunnel, in 1904. The two wells were bored in the two years previous. The two wells that made that one weir measurement into the tunnel, in 1902 and 1903, if I remember right, one in each year.

Q That does not cover the question. The question is whether there was any waste of water from those wells before they were connected with the tunnel.

A No, sir.

Q Which connection was made, as I understand you, in 1904?

A Completed in 1904.

Q Does this tabulation, this tabulation which was put in evidence, show a continuation of the measurements at the creek division box, exhibited on plaintiff's exhibit 32?

A Yes, sir.

Mr. Pritt: We offer in evidence now this tabulation to which the witness testified yesterday. It has been examined by counsel on the other side, and we ask that it be marked plaintiffs' exhibit 78. I thought we would connect it up with the former series of measurements shown in exhibit 3 and in exhibit 11, but inasmuch as those were made separate exhibits, we might as well make this a separate exhibit, and call it 78.

Cross Examination.

By Mr. McKinley: Q These wells that you refer to -- just step to the map here -- the one of 100 inches --

A I said it was called a 106 inch well. It is shown by a pencil mark on plaintiffs' exhibit 1 near the northwest corner of the 90 acre tract.

Q Is there a branch tunnel running out there where you marked the line?

A Yes, sir, a branch of the tunnel about 100 feet long, to connect those wells with the tunnel.

Q Did that well flow 100 inches --

A I never measured it --

Q -- after it was connected?

A After it was connected?

Q Yes?

A Yes, sir, after it was connected; I think the highest measurement I made was 180 inches.

Q That was for the two wells?

A Yes, sir, that the two wells flowed.

Q And what happened to those wells subsequently, if any-

thing?

A So far as I know, nothing; they are still flowing, to the best of my knowledge and belief; they have been submerged for two years.

Q By reason of the bulkheading?

A Yes, sir.

Q You mean the water had backed up so that you can't make measurements if water comes in.

By Mr. Hassell: Q ~~You mean the water is~~ You say certain wells there have been submerged for two years: That is, by reason of the bulkhead being placed where it is, is it not?

A Yes, sir.

Q And the fact that there is a column of water of greater or less depth above where the well is cut off, would it retard the flow or not from those wells?

A It certainly would retard the flow.

Q Retard the flow in proportion to the column of water resting above it, wouldn't it?

A Lost assuredly.

Q Just the same as the water rising that much higher.

-o-

Plaintiff rests.

-o-

Mr. Curtis;Sr.: The Sunset Water Company desires to make a motion for non-suit, and would like until the afternoon session in which to prepare its formal motion. I suppose there will be no objection to that.

Mr. Britt: We haven't any.

The Court: Do you mean you desire to make a motion then without any prejudice by reason of the defendants going on with the evidence?

Mr. Curtis: Yes, sir.

Mr. McKinley: We don't know about that. We would like to have a consultation about that, your Honor.

Mr. Conner: The defendants whom I represent will want the same privilege, the Hermosa Water Company and Sam Johnson.

Mr. McKinley: We don't want to delay these proceedings in any way, but we do not feel that we can, in justice to our case, proceed until this matter is disposed of.

The Court: Very well, then, we will proceed, or they can make their motion now.

Mr. Curtis, J.W.: Can we have about five minutes?

The Court: Very well. We will compromise on that.

Mr. W. J. Curtis: The Sunset Water Company, one of the defendants herein, now moves the court for a non-suit in this action and a judgment of dismissal against the plaintiffs and the intervenors herein, and each of them, on the following grounds:

First: That the evidence is insufficient to prove any of the facts alleged in the fourth amended complaint of the plaintiff against this defendant or any of the facts alleged in the first amended complaint in intervention against this defendant, or to entitle the plaintiffs or any of them to the relief prayed for against this defendant in said fourth amended complaint, or to entitle the

intervenors, or any of them, to the relief prayed for against this defendant in said first amended complaint in intervention, or to any relief against this defendant.

Second: That the plaintiffs and each of them have failed to prove a sufficient case against this defendant for a jury or for the Court sitting as a jury.

Third: That the intervenors and each of them have failed to prove a sufficient case against this defendant for a jury or the Court sitting as a jury, -- based upon subdivision 5 of section 581 of the Code of Civil Procedure.

Mr. Conner: On behalf of the defendant, Hermosa Water Company, and the defendant Johnson, I move for a non-suit on the same grounds as stated by counsel in his motion for a non-suit on behalf of Sunset Water Company.

The Court: Have you anything to say in support of your motion?

The motions are argued by J. M. Curtis, Mr. Conner, for defendant Sunset Water Company and Hermosa Water Company, and argued by Mr. Britt and Stephens for plaintiffs, and by Mr. Haskell for intervenors, and by Mr. McKinley for defendant, San Antonio Water Company and Ontario Power Company, and by Mr. Waters for plaintiffs.

The Court: The motion for a non-suit is denied.

Mr. Conner: The defendants Heresosa Water Company and Johnson except.

Mr. J. W. Curtis: The defendants we represent except.

-o-

Mr. Mc.Kinley: I am desirous of asking the plaintiffs to produce certain papers that I want to make a matter of record.

I observe that there was some discussion heretofore and an agreement on the part of plaintiffs to produce if possible the minutes of the plaintiff companies, covering all of their periods, but it has not yet been produced; and I will make a request for the things I want, and they can be produced at the first convenient date:

I desire to ask plaintiffs to produce the minutes of the Cucamonga Vineyard Company, covering the period of its existence. The minutes of the Cucamonga Land and Irrigation Company, covering the same period. All reports to either of these companies with reference to water measurements, and to water matters, from their agents. The books of the Cucamonga Vineyard Company, showing the product of the vineyard and the proceeds thereof, going back to 1897; and any books, reports, or statements they may have, showing the proceeds from the lands; and the stock-books of both companies.

-o-

E. M. LILLEAN.

E. M. LILLEAN, a witness called by defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Mr. JOLIFFE, Q Where do you live?

A I live at Upland.

Q Have you any interest in the Upland Water Company, one of the defendants here?

A I have; yes, sir.

Q Are you an officer of that company?

A I am president and manager.

Q How long have you been such officer?

A Four years its president and manager.

Q Have you held any office in the company, prior to the time you became president?

A I was vice-president and zanjero the first year that the well was pumped.

Q When was that?

A That was in 1901.

Q Have you been a stockholder of the company since its organization?

A I have been; yes, sir.

Q Have you with you, the deed of the property claimed by the Upland Water Company?

A I have the original deed to that property from Mr. Sourwine

Q Will you produce it?

A Yes, sir.

Mr. Joliffe: I have here a deed running to the Upland Water Company, a corporation, of the west half of lot 7, in Block

16, of the Cucamonga Homestead Association, according to the plat thereof, recorded in Book 6 of Maps, at page 46, records of San Bernardino County, and also one-half of 3/500 of all the water flowing or to flow in the Cucamonga Creek and Canyon, being the water right now appurtenant to the premises therein described, which deed is of date January 22, 1901, and purports to have been recorded by certificate on the back of the deed, at the request of the Upland Water Company, January 22, 1901, at two minutes past 12 o'clock M. in Book 297 of deeds, at page 196, of the records of San Bernardino County. I offer this deed in evidence.

Mr. Stephens: What is the purpose of this?

Mr. Joliffe: Merely to show title to the property on which the well is situated. I will follow this up by showing the location of the well, if they have a well on this, and the manner in which they have been using the well.

Mr. Britt: We make no objection to this deed, provided it is understood that if in the progress of the trial we desire that the title shall be traced to the original source that we may do so. This deed does not show that Mr. Sourwine had any title. I don't know that it is material or that we shall require it, but if it should become material in the course of the trial to require that this title be traced, why then we reserve the right to strike out this deed, because not connected with the paramount source of title.

Mr. McKinley. We will doubtless trace it.

Mr. Joliffe. We offer it for the purpose of showing what it does show, also, in regard to the water rights of the parties.

Deed admitted, marked "Defendants' Exhibit A"as follows:

DEFENDANTS' EXHIBIT A.

I, James H. Sourwine (widower) of North Ontario, California, in consideration of Six Thousand Dollars ($6000) the receipt whereof is hereby acknowledged, grant to The Upland Water Company, a corporation, of North Ontario, California, all that real property situate in _____, County of San Bernardino, State of California, bounded and described as follows:

The West one half (1/2) of Lot Seven in Block Sixteen (16) of The Cucamonga Homestead Association Tract according to the plat thereof recorded in Book Six of Maps at page Forty Six Records of said County, and containing Ten acres more or less. Saving and excepting and reserving to the grantor and assigns One half of Three (3) Three Hundredth (3/300) part of all the water flowing or to flow in Cucamonga Creek or Canon, being the water and water right now appurtent to the premises herein described.

(United States Revenue Documentary Stamps cancelled).

Witness my hands this 22 day of Jan - 1901

James H. Sourwine (Seal)

_____(Seal)

_____(Seal)

STATE OF CALIFORNIA, }
County of San Bernardino, } ss:

On this 22nd day of January, in the year one thousand nine

Hundred and One, before me Judah L. Mack, a Notary Public in and for the County of San Bernardino, State of California, residing therein, duly commissioned and sworn, personally appeared James H. Sourwine, known to me to be the person whose name is subscribed to the within instrument and he acknowledged to me that he executed the same. Witness my hand and official seal at said County:

Judah L. Mack
Notary Public in and for the
(Notarial Seal). County of San Bernardino,
State of California.

Endorsed on the back of said deed:
"Recorded at Request of Upland Water Co., Jan.22 1961 at 2 min. past 12 M., in Book 297 of Deeds, page 196, Records San Bernardino County,

J.F.Johnson, Jr.,
County Recorder,
By E.R.Fussell,
Folios 4 Deputy Recorder. "
Fee 80 ¢."

Q Are you acquainted with the location of the well- -

A I am; yes, sir.

Q Which is owned by your company?

A Yes, sir.

Q Where is it situated?

A It is half a mile west of the Ioamosa Post Office, on Nineteenth Street of Upland.

Q How far is that above the Base Line?

A Three-quarters of a mile.

Q How far is it if you know, north of where the Cucamonga Springs used to be?

A As I understand where the Springs - they are really above the old Mountain View Hotel, and it is fully a mile or a mile and a quarter above the Springs.

Q How far is this well from the Y tunnel, the head of the Y tunnel?

A About a mile.

The Court, Q Directly north?

A Directly north.

The Court: Is that well indicated on that map.

Mr. Joliffe: I don't think so; it is further north than any of the lands which are - I don't know about this map. On the first map, it is further north than any lands described there

A That must be it.

Mr. Joliffe, Q Can you locate the well of the Upland Water Company on the Exhibit on the board, marked Exhibit 77?

A I can; yes, sir.

Q Please do so; read the legend as it is on there.

A "Upland Water Company's well; elevation of ground, 1554

feet; May 11, 1908. Elevation of water 1378.10.

The Court: That is the well to which you have been referring?

A Yes, sir.

Mr. Joliffe, Q Was that well on the premises at the time you purchased from Mr. Sourwine through the deed that has just been introduced?

A Yes, that well was on the premises at that time.

Q Do you know who dug the well?

A The well was dug by parties associated with Mr. Sourwine, the previous season.

Q In the year 1900?

A In the year 1900.

The Court, Q Is that sometimes referred to as the Sourwine well?

A That is; yes, sir.

Mr. Joliffe, Q Do you know whether or not any water was pumped from it in the year previous, in the year 1900?

A Mr. Sourwine I understood had a -

Mr. Britt: Just one moment.

Q I only ask for your own knowledge.

A No; not before 1900.

Q What did you do with the well,- your company do with the well after you acquired theproperty?

A We proceeded to erect a pumping plant and test the well in May, 1901. And that Fall we had laid our pipe line to the Mountain View tract, and began using the water as a regular irrigation head the 19th of August, 1901.

Q What sized pipe did you lay, running from the well to your lands?

A We laid a ten inch pipe to the section line west of Euclid Avenue, and from there it is an eight inch pipe another mile to our tract.

Q What distance is your lands from the well?

A About five miles.

Q What is the tract known as? What is the designation of the tract upon which these waters are used?

A Mountain View tract.

Q Sometimes spoken of as the Mountain View addition to North Ontario?

A It is.

Q Now, about how much water,- You said you tested that well, About how much water is it capable of furnishing?

A We tested a 48 hour run, and it tested between 50 and 60 inches, capable of furnishing that.

Q And the capacity of your pumping plant is sufficient to lift that amount of water?

A Not at the present time, no; it lifts about 40 inches.

Q And about the amount of water,- what amount of water have you taken from there?

A We have used about 100 day service, during each year since that.

Q That is since 1901?

A Since 1901.

Q And you used it to some extent during 1901?

A From August 19th until the rainfall, which is sometime in November, I believe.

Q And you have used it as a matter of fact every year when y you needed water for irrigation?

A We have.

Q Now, this water was used on this Mountain View Addition thatyou have spoken of?

A Most all of it; a part was used on Mr. Sourwine's property in the Ontario Colony, a mile northeast of the Mountain View tract.

Q And used for irrigation?

A Used for irrigation.

Q What was the character of the grounds irrigated, and what were they planted in, this tract?

A They were planted to citrus fruits, orange and lemons.

Q What amount of water have you taken? The size of the heads that you have taken from there?

A We have pumped from 35 to 40 inches at a head.

Q In speaking of 100 day service each year you mean to imply that it was a continuous flow of that volume of water during the 100 days?

A I do.

Q And during the full irrigating season as far as you needed the water?

A As far as we needed the water.

Q Has your right to the use of that water ever been questioned prior to this time?

A It never has.

Q You have used it openly?

A We have; yes.

Q And notoriously?

A Yes, sir.

Q A matter of common knowledge to everybody around there?

A Must have been; nobody could hide it.

Mr. Haskell: We object to those questions as leading.

Q What was the expense of your purchase of that well, and grounds, and improvements that you made in connection with your water-plant, which is dependent on the wells?

A We spent about thirty thousand dollars in developing and piping that water, and in pumping plants.

Q Was the well plainly on the ground to be seen before you purchased?

A Before we purchased the land of Mr. Sourwine; yes, sir.

Q Has everything which you have done, has that been done openly and plainly to be seen by every one?

A It has; the plant has been open for inspection by every one.

Q How many acres of land are irrigated from this well?

A There are some 200 acres I believe in the Mountain View tract, that gets water from that.

Q You spoke of some lands of Mr. Sourwine?

A Mr. Sourwine has about 40 acres under that pipe line, besides ten acres at the well.

Q What is that land planted to?

A Oranges and lemon-trees; citrus fruit.

Q Would that land be valuable except for this water?

A It would not.

Mr. Britt: This question, like much of the examination, has been very leading, but it seems to me that is the quickest way to get through with it.

Mr. McKinley: That is the reason we have been asking the questions that way .

Q What improvements have the people on the Mountain View tract and Mr. Sourwine made, since thepurchase of this water and this well?

A They have planted other orchards, and also been able from the products of their orchards to improve in the way of buildings, valuable residences, and so forth.

Q About what extent of planting has been done?

A There has been 40 or 50 acres planted under that system.

Q Since the purchase of the well?

A Since the purchase.

Q What improvements have been made in the way of roads and Macadamizing streets, or anything of that kind?

Mr. Britt: Objected to as irrelevant and immaterial.

The Court: The objection is sustained.

Mr. Mc.Kinley: Exception.

Q About how many people are there living on that Mountain View tract that are dependent upon this water?

A There are some 12 or 15 parties.

The Court, Q Do you mean families?

A Families.

Q Has the number increased since the purchase of this well?

A There has been new settlers, yes; new parties.

Q You obtain water for domestic use also from this well do you?

A We do not.

Q You do not obtain it?

A No.

Q What relation have these persons living on that tract to the Upland Water Company? Are they stockholders in the

company?

A They are stockholders in the Upland Water Company.

Q Explain the system under which the water is delivered to the consumers, by virtue of their ownership of stock or otherwise?

A It is turned into what was originally the Sycamore Water Development Company's pipe lines, owned by the present stockholders of the Upland Water Company, and distributed through those cement and vitrified pipe lines to their various orchards

Q In proportion to the amount of stock held by each person?

A In proportion to the amount of stock that each man holds.

CROSS EXAMINATION.

Mr. Britt, Q Are you an officer of the Upaland Water Company now?

A I am.

Q When was the Upland Water Company formed?

A It was organized January 3rd, 1901, as their first organization meeting.

Q Was that the date of the incorporation?

A The date of the incorporation papers I believe was November 20, 1900; I have them here.

Q Will you allow us to see the articles of incorporation.

A If I may be allowed to get them.

(Documents handed to Mr. Britt for inspection.)

Q What office do you hold at the present time?

A I am President and manager.

Q You have been an officer of the company ever since its organization?

A I was vice-president the first four years, and president

since.

Q Before you made this purchase of the land from Sourwine, in 1901, did you make any examination of the well situated on the premises bought from him?

A Along in June, 1900, a party of us went there and examined the old shaft that was on the ground, and made an agreement with Mr. Sourwine to put down a test well,- furnish the money- that he should put down a test well, and if it developed a certain amount of water, we would organize a stock company, and take stock with him.

Q What sort of a well did you find on the premises, on the Sourwine place?

A We found a dug shaft about four by four, if I remember the dimensions.

Q What was its depth?

A 142 feet, if I remember that.

Q Was that the only well there was on the premises?

A That was the only well on the premises.

Q Was there a pump? to operate the well?

A There was no pump in it.

Q How did you get the water out of it? Was there any water in it?

A There was no water in it at the time.

Q It was a dry well was it?

A There was no water to be seen in the well.

Q Where was Sourwine getting water from for domestic use on that land?

A He wasn't living on that land.

Q Was the land occupied at that time?

A He had a grove on it of orange trees, intercepted with peach trees.

Q Was the shaft dry?

A The shaft was dry.

Q You say it was 140 feet deep?

A 142 feet, if I remember correctly.

Q How is that well situated with reference to the wash of the Cucamonga Creek that comes down from the mountains? It is east of the wash isn't it?

A Quite a distance east.

Q Do you remember how far?

A It must be three-quarters of a mile; close to that.

Q Did you put down a test well?

A We put down a twelve inch hole- a drilled hole.

Q At what time?

A They completed the drilling, October 30th, 1900, 454 feet deep.

Q Did you measure it or was it measured by your direction?

A I have measured it since. And that was the depth the driller claimed for it.

Q Did you preserve a log of the well?

A I have a log of it; yes, sir.

Q Have you it with you?

A I have a copy of it in a book here

Q Will you please let me see it? Were you present Mr. Dillman, while the boring of that well was going forward?

A I was present at various times, and I was there the day they stopped drilling.

Q I will ask you to read into the record here, if you please

so the reporter may take it, the log of the well.

A Upland Water Company's well record. 132 feet, original shaft. I was mistaken in 10 feet, I suppose, a while ago. 132 to 160 feet, dead gravel.

Q By that dead gravel, you mean it was dry?

A Dry gravel. 160 to 188 feet, water gravel, 28 feet strata. 188 to 202, clay. 202 to 284, water gravel; 82 foot strata. 284 to 296, hard clay. 296 to 394, gravel; water gravel, 98 foot strata. 394 to 398, clay. 398 to 420, water gravel; 22 foot strata. 420 to 434, clay. Do you wish me to read the remainder there.

Q That completes the log of the well, doesn't it?

A That completes the log.

Q Now, in putting down this well, this test well, did you measure the quantity of water that was received from the successive strata of water-bearing gravel?

A There was never any measurement or pumping to test how much each strata gave.

Q Now, the first that is mentioned here, the first stratum of gravel in which water was obtained, was that from 160 to 188 feet: Do you remember anything about how much water that stratum which is 28 feet thick produced?

A They claimed there was a raise of water there I believe

Q You don't know how much?

A I don't know how much.

Q Was this test well pumped at all before you ceased drilling

A It was not.

Q I observe that it is noted here that at the depth of

348 to 350 feet, the raise of water was first noticed.

A 200 isn't it? Well, that is a mistake then.

Q Just notice here if you please.

A Well, it is a mistake. Why, yes; that is correct. I was thinking it was below the depth of the well.

Q 348 to 350 feet the raise of water was first noticed?

A Yes, sir.

Q That means that the water raised above - -

A It had raised above where it had been in drilling.

Q When you ceased drilling, do you know at what depth below the surface the water stood?

A I do not.

Q That was put down, I understood you to say, in the Fall of 1900?

A Yes, sir.

Q When did you first pump that well?

A May 22nd to 24th.

Q The next year?

A The next year.

Q And you found that it pumped how much?

A We installed a pumping plant to test the well, to see what sized pipe line we could afford to put in, and we found it would pump about 60 inches of water under a 48 hours test without going beyond the suction limit of the pump.

Q When you drew 60 inches of water from it, did you notice to what extent the water was drawn down in the well?

A Coulon't tell, because the suction pipe was down in the 12 inch hole, and they didn't measure it, the pump enclosing the drilled hole so that they couldn't measure it.

1 1Q The well was piped I suppose?
2 A Yes, sir; it was piped.
3 Q Was the piping perforated?
4 A It was.
5 Q At what depths?
6 A At the various water gravel stratas; I don't know just
7 the depths.
8 Q Was that well ever deepened any?
9 A The drilled hole has never been deepened; we sunk our
10 shaft deeper; the present shaft is 180 feet deep; there is a
11 shaft 180 feet deep, and with the drilled hole in the bottom
12 of that, reaching from the surface 434 feet.
13 Q The shaft was originally 152 feet, and you sunk it to 180?
14 A We have.
15 Q But the well itself has never been lowered below the
16 434 feet?
17 A No, sir.
18 Q At what time did you put in the pipe connection with the
19 well, carrying the water away to Upland or somewhere?
20 A Between the latter part of May and the 20th of August,1901
21 Q That is the pipe line?
22 A Yes, sir; the pipe line we installed between those dates.
23 Q Has the same pipe line been in place ever since?
24 A Yes, sir.
25 Q What is the diameter?
26 A Ten inch pipe for about four miles, and the remain of
27 the distance about eight inch.
28 Q Did you pick up any additional water on the way?
29 A We did not.

Q Through that pipe line is any other water conducted save that from the Sourwine well?

Q Why, at a point over west of Euclid Avenue, Mr. Sourwine occasionally turned in a head of water to irrigate his grove.

Q Where is Euclid Avenue with reference to this well, how far west?

A It is about a mile and a half to the west of this well.

Q About a mile and a half west?

A Yes, sir.

Q You have obtained no other supply of water since for transporation through that pipe, since that well was turned into the pipe, or the water from it was turned into the pipe, you have increased your supply from no other source?

A No, sir; we have not.

Q Now, you say that you first turned the water from the well into the pipe in August, 1901?

A Yes, sir.

Q What quantity did you take that season?

A We pumped about 40 inches.

Q Have you kept a record of the quantity pumped each year?

A I haven't it here; but we kept a record; yes, sir.

Q Where was the record kept? At the well, or at the place where the water was discharged?

A It was kept at the well, and also at the tract where it was discharged.

Q You have a record of both?

A Yes, sir.

Q Will you produce those, or send them in to counsel, so that we may examine them, that is commencing with August,

and thence to the present time?

A Yes, sir.

Q This pipe that you speak of is sunk I presume beneath the surface of the ground?

A It is.

Q How deep?

A From 10 inches, to five or six or seven feet, according to the banks it passes through.

Q Is it down hill all the way?

A It is down grade all the way.

Q When did you first begin to use the water for irrigation, the first year that you took it over to Upland?

A We began to use it August 19th, 1901.

Q How much did you use then?

A We pumped about 40 inch head, and we used it continuously until the rainfall that season.

Q Where is this tract situated on which the water is used with reference to the country where the San Antonio Water Company uses its water,- north?

A It is just to the west of the San Antonio Water Company's lands,- the Ontario Colony lands; the west edge of the Ontario Colony lands.

Q Your line of pipe is how long?

A About five miles.

Q Have you at any time sold any water derived from the Sourwine well?

A Only to stock-rights, that is all, as originally organized.

Q Never furnished any to the San Antonio Water Company or

to the Ontario Power Company?

A We never have.

Q Have not sold any of it?

A No, sir.

Q What is the plan of the disposition of the water to the stockholders? Do you sell it to them at so much per inch, or do you levy assessments to pay expenses?

A We levy assessments, and the water is apportioned according to their stock, 24 hour run to 10 shares of stock.

Q The stockholders do not pay anything directly for the water they receive?

A They don't pay directly; they pay assessments, which goes into the general fund, for maintaining the plant and permanent work, and they receive their water.

Q I notice in this deed which was placed in evidence, that there is a reservation of some of the water involved for the land on which it is pumped.

A Mr. Sourwine owned a little water out of the Cucamonga Canyon water, which he had been using on that ten acres, and he reserved that right to place it on the land or to sell where he pleased, and we supplied that ten acres from the well in the after years.

Q Is there any water taken from the well and used in that neighborhood, that is in the neighborhood of the Sourwine ten acres which you bought?

A The ten acres which the well is situated on is irrigated from that well.

Q From the well?

A Yes, sir.

Q Previous to that time it had been irrigated,- previous to the time your company purchased it, it had been irrigated from some other source had it?

A It had; yes, sir.

Q Do you know how much water is used for irrigating the ten acres,- how much is turned out from the well for that purpose?

A There is a 24 hour run used on that ten acres to irrigate it.

Q a 24 hour run of all the water?

A A 24 hour run if the water is used on that ten acres.

Q How often?

A Once in thirty days.

Q Once a month during the irrigating season I suppose?

A Yes, sir.

Q You said that there were only some 40 or 50 acres that had been improved on this tract: What do you call this tract where this water is used for irrigation?

A Mountain View Tract; Mountain View Addition to North Ontario sometimes called.

Q Mountain View Tract?

A Yes, sir.

Q And the tract is how extensive?

A There is three-quarters of a section of land in the Mountain View Tract.

Q You say there are 40 or 50 acres of land have been improved since your company acquired this Sourwine water?

A Yes, sir; there has been about that amount of planting since the Sourwine well was dug.

Q Be ore that time where did you obtain water for use on that tract?

A They had been getting water from the Sycamore Water Development Company's tunnel.

Q Did that become exhausted?

A It did, in a few years later, until the tunnel became exhausted, and they were obliged to pump the well; that is what is known as the Sycamore Water Company's tunnel, now known as the Mountain View Water Company's tunnel, became dry, and they had to pump from below the tunnel, and lift it up to the tunnel; the tunnel ran dry, and they were obliged to pump from the stratas below.

Q Is that source of supply still used for the irrigation-

A That source is still used.

Q - - of your tract?

A It is.

Q And you mingle the water from the two sources do you?

A We don't mingle the water; the parties have water from both sources, and they use it as separate heads; they use it on the same lands, but it is separate heads.

Q How much do you get from the Sycamore tunnel?

A There is about one hundred inches being used from that, but not all on that tract.

Q The Sycamore tunnel, as I understand you, petered out, it ceased to produce water, and you pumped water from below into the tunnel?

A We did at one time.

Q Did you lease any water from the Sourwine well to any people?

A We did not.

Q Do you know Mr. Saulsburywho grew some potatoes?

A Mr. Sourwine leased some water from that well; he had the stock; the company did not lease it; Mr. Sourwine did, of his own water.

The Court, Q I suppose you mean certain water he was entitled to by reason of being a stockholder in this company he leased to Mr. Saulsbury?

A Yes, sir.

Mr. Britt, Q Were there any other stockholders in the company that leased water that they derived from the company?

A Not that I remember of.

Q Was Sourwine the only one?

A So far as I remember at the present time.

Q How much water did Sourwine receive?

A He had about an eight day run, out of the month. He had about 80 shares out of the 300 or 8 days out of the 30.

Q Eight-thirtieths of all the water from the well?

A At that time he did; yes, sir.

Q He used this for his own purposes and also sold the water to other people?

A He did, wherever he could.

Q Was he the only stockholder that was able to sell water or lease it?

A There might have been others, but I don't just recall who it was.

-o-

Here the Court takes a recess until 2 o'clock p.m.

-o-

AFTERNOON SESSION.

Mr. Britt: Q Did your company bore any other wells in the neighborhood of this Sourwine place, described in the deed introduced in evidence?

A No, sir. They never bored any other well. Allow me, Mr. Britt, to answer a question more fully that you asked before intermission. We have here, as part of the record of our company, every hour's water used for irrigation purposes, and I find that Mr. Sourwine used more water the second and third year from that source than they did afterwards.

Q Than what?

A Than he had been taking for his share afterwards, in relation to that leased water that you quizzed me about.

Q Over at Uplands?

A Near the wells. He rented about three or four days' water each month to Mr. Salisbury for two seasons; may be five days a month.

Q Where did Salisbury use the water?

A He used it north of the pumping plant; across the road.

Q How far north?

A About 40 rods -- the next 10 acres above.

Q That 10 acres directly north of the 10 acres that your company bought from Sourwine?

A Yes.

Q In what years did Salisbury use it?

A It must have been in the years 1902 and 1903.

Q Use any since?

A I don't think so.

Q Who has been farming the Courwine land, this tract of 10 acres, since the deed to your company?

A The Upland Water Company's men. I took care of it myself one year.

Mr. Pritt: I think that is all. There may be something further in connection with these figures showing the quantities of water, later on.

Re-Direct Examination.

By Mr. Jolliffe: Q If you have it there, Mr. Hillman, you may read from your record the amount of water which has been taken from that well and where it has been taken to.

A We began using the water first in August, 1901 -- August 19th -- and almost a continuous run until October 26th. The next year we began using the water April 23rd, and with a few days intermission each month for six months.

Q Give us the date when you ceased to use it, if you ever did, the second year.

A The second year?

Q That would be 1902.

A November 6th , 1902. April 23rd, to November 6th, 1902. 1903, June 15 --

Q That is the date you commenced?

A That is the beginning. To October 26, 1903.

Q Used it continuously in the meantime?

A No, there was a few days each month that it was not used. Three or four, or perhaps five days each month. In 1904 we began using it June 3rd until November 1st, 1904.

The next spring we were supplied by the San Antonio Water Company for a month or two with water instead of power. In 1905 we were supplied for a limited time with water instead of power.

Q Explain that more fully.

A We had a power contract with the Ontario Power Company to furnish power. They had a surplus of water and turned us a head of water instead of furnishing us the power, which they save to themselves for the first two months of the season, beginning June 1st.

Q When did you commence pumping that year, if a all?

A About August 1st.

Q And how long did you continue?

A Until November 5.

Q Well, the next year?

A The pump started about August 1st, 1906, and ran till October 25 -- yes, later than that -- till November 22. In 1907 the pump started June 3rd, and ran until November 24th. This year I haven't the record transcribed into this book, but it was about the same as it had been the previous year, about 100 days run for this year.

Q There were 3 or 4 days in each month, you say, in some of the former years that you don't have a record: Was the pump running during that time?

A No, sir; the pump was lying idle, Mr Sourwine having more water stock than he could use the water for, and during that time he let it lay idle.

Q These times that you have given there embrace all the time that the pump was running?

A It does, and a few days each months stoppage.

Q And the least water -- the time Mr. Sourwine leased the water -- was in 1902 and '3?

A Yes, sir.

Q Something was said about Mr. Sourwine turning some water into the pipe line west of Euclid Avenue. Can you point out on this map, which is exhibit 77, about where that is?

A Our pipe line is not shown on that. Here is the well. The pipe line runs across in this direction.

Q Euclid Avenue is not shown?

A No, sir.

Q How far west of Euclid Avenue is that point where it was turned in?

A Nearly 3/4 of a mile.

Q West of Euclid Avenue?

A Yes, sir.

Q How far was it from the well?

A About 4 miles; nearly 4 miles from the well.

Q You said in answer to a question from Mr. Britt, that you obtained some water from the Sycamore tunnel. What tract of country does that Sycamore tunnel supply or who got water from that?

A That was the original water source of the Mountain View tract, and during the dry years some of the stockholders and water-right users of the tract went up on 21st street and put down a well known as the Canyon Ridge well, near the Bodenhamer well, and piped that down on the tract. That not being sufficient to supply the de-

lands for water, owing to the shortage of the Mountain View tunnel, a number of us members of this Upland Water Company bargained for Mr. Sourwine's ten acres and put down the well, and organized the company.

Q This supply which you obtained from the Sycamore tunnel was entirely inadequate?

A It was very inadequate to the needs.

Q How much land was supplied by the Sycamore tunnel?

A At that time it was distributed over about 1,000 acres of land, and it had run down to a 10-inch flow before they began to pump.

Q How much did they pump?

A And they were able to pump only about 30 to 40 inches.

Q And with the pumping, your supply was still inadequate?

A Very inadequate.

RE CROSS EXAMINATION.

By Mr. Haskell: Q On your direct examination I understood you to say that the tract of land which you say was irrigated by the Upland Water Company was supplied by water from the Sourwine well for about 100 days service in the year. That was correct, was it not?

A Yes, it was correct, and still the second and third and fourth year we used from the Sourwine well we used more than that number of days. I find, by referring to our record here, that we used as much as 120 to 150 days the second, third and fourth year. That was 1902, '3 and '4.

Q What do you call a day's service?

A 24 hours run.

Q Did you measure this water during that time over a weir?

A Yes, sir.

Q What were the measurements in 1901?

A In 1901 we were pumping from 40 --

Mr. Britt: Just one moment. I understood the witness to say awhile ago that he had a record showing the measurements every day.

A I can't show the record for every day.

Mr. Britt: He was asked to produce the records.

Mr. Haskell: If he can produce the records I will withdraw the question.

The Court: I understand he has produced whatever records he has.

Mr. Haskell: Q Have you the record and the only record of measurements that you have of the waters that you took from that source?

A Yes, I can say that it is the only record that I have, but I remember how much water we got from that source. I can testify to that.

Q You have the record there in your hands?

A For one year. I find the zanjero kept a record twice a month of his measurements.

Q What year is that?

A 1904. Here are his measurements.

Q Where is the measurement?

A June 3, 36.43. June 15, the same amount.

Q 36.43 inches?

A That was pumped at that time. The next month --

Q What month is that?

A July 6, 35.17 inches.

Q What year is that?

A 1904.

Q Go on, and give the measurements.

A July 20, 36.43 inches. This is August 3rd, 35.17 inches. August 15, 35.17 inches. September 1st, 29.37 inches. September 14, 30.97 inches. October 4, 29.37 inches. October 17, 29.37 inches. That is the last measurement.

Q Now are there any other memoranda of measurements made in that book for any other year?

A Not that I know of.

Q Those are all for the year 1904 are they?

A In the last four years we had a pump that pumped 35 inches of water, no more and no less.

Q That was its capacity?

A Yes, sir.

Q Did you run it up to its capacity?

A Yes, sir.

Q Night and day?

A Yes, sir.

Q And the pump never broke down for repairs?

A I didn't say that. It broke down quite often. I say it ran to its capacity.

Q About how many days in the year during the irrigating season was the pump out of operation by reason of breakages or for any other cause?

A Well, there was some times we were broke down for 10 to 15 days, but we ran to make up that time to the stockholders.

Q At the end of the irrigating season?

A We ran straight through till it rained.

The Court: You mean you protracted the pumping season that much longer?

A There was parties that didn't use their water, like Mr. Sourwine. They took time credit for it, and other parties were allowed their time.

Q You simply extended the season?

A No.

Q You stated a moment ago that your pumping plant was running 35 inches to its full capacity. If you didn't extend the season, I don't see how you could make up the shortage.

A We began early in the season, and the full thirty days a month was not used by the stockholders, Mr. Sourwine owning some eight days since 1903 that he was not able to use near all the time, and the days that he couldn't use were transferred to other parties and used by other parties, and he took time credit for his water.

Mr. Haskell: Q You have already testified, as I understand it, from this memorandum, the day on which you started the pump each year and the day on which you ceased to pump each year.

A I did.

Q Between those dates, there were spaces of time running as high as 10 or 15 days when the pump was out of operation?

A We have it here; yes, sir.

Q You have those days.

A Yes, sir.

Q It will take you some little time --

A It will take more time than you want to give, but I will say that in this book is recorded, with the exception of this years run, every hour of water that we have used as an irrigation head.

Q And if you are dismissed from the stand, or after you are dismissed from the stand, I wish you would compute the number of days that it was out of operation during the irrigating season of each year, and then we will recall you later to answer that question.

The Court: Q Can you tabulate it?

A I think I can.

The Court: That will be the simpler way, I take it.

Mr. Haskell: Q How many acres were irrigated? 200 acres?

A There was some 200 acres that it was used on.

Q Were those 200 acres irrigated exclusively from this pumped water?

A They were not.

Q Where did you get this other water?

A A part of it came from the Mountain View tunnel, or old Sycamore Water Development Company's tunnel, and a part from the Canyon Ridge Water Company.

Q Have you got the record of the amount of water that was obtained from those sources each year?

A No, I have no record of it.

Q I understood you to state on direct examination that that amount of water was approximately 100 inches of water.

A It has been for the last four years.

Q And then you are using an inch to two acres from other sources?

A An inch to two acres?

Q That is, you have 200 acres of land and 100 inches of water. That is an inch to 2 acres, isn't it?

A This 100 inches is not all used on that 200 acres.

Q How much of it is used on that 200 acres?

A There is about 60 inches of it.

Q Now this 200 acres, is it all planted to orange orchards and other like products?

A It is.

Q And it was so planted, all except 40 acres of it, when you obtained this Upland well, was it not?

A Yes, sir.

Q And was irrigated from these other sources of which you speak?

A It had been.

Q And you used no domestic water whatever from the Upland wells?

A We did not, except what we dipped out with a bucket occasionally.

Q Now then, in boring this well, as I understood you to say, when you first went to the Southwine well, there was an old shaft there of 130 feet in depth?

A Yes, sir.

Q In which there was no water?

A Yes, sir.

Q How far at that time in 1900 or 1901 did you have to sink that shaft to get to water?

A They drilled a well first, and I find here it was about 160 feet to the water level.

Q At that time?

A Yes, sir.

Q Since then you have sunk that well or shaft to a greater depth, have you not?

A We sunk it 20 feet further.

Q At what time did you sink that?

A We would do that in the fall of the year after the pumping season was over.

Q Why did you do that?

A The water level was going down a little and we would sink that to lower our pump.

Q And when was the last time that you had to lower the pump and sink that shaft in order to follow the water level?

A That was in 1904; in the fall of 1904.

Q And since the fall of 1904 the water has begun to rise?

A It rose; yes, sir.

Q Do you know the level of the water plane there at the present time?

A I don't know just the exact number of feet; I know it is higher than it was in 1904.

Q About how much higher?

A It must be 25 feet or perhaps more.

Q Constantly rising, isn't it?

A I don't know whether it has raised any more during the

last year than it was a year ago.

Q Now you spoke about water gravel in this record of boring this well. You gave what is called the log of the well in boring, and you classified certain strata as water gravel. Did you see that gravel yourself?

A I did not. I took it from what the driller reported.

Q You have seen the gravel that came outof that well? You have seen it on the dump?

A I have seen what we dug out of the shaft.

Q Is that gravel worn smooth or does it have rough edges like broken rock?

A It is not worn smooth; no.

Q Some of it is, isn't it?

A It has more or less dirt among it.

Q Mingled with it. But about how large a piece of gravel have you seen come out of that dump-- out of that well?

A Well, they dug out some good sized boulders and decomposed granite.

Q Are those boulders worn smooth or do they have ragged edges?

A I never examined the edges of them.

Q You have seen them, haven't you?

A I have seen them; yes.

Q Just the same kind of boulders and gravel that you see in the Cucamonga wash.

A They are not.

Q In what respect are they different?

A Because they are decomposed granite and those in the Cuca-

monga wash are hard granite. Those that we dug out of the Upland well we could strike a pick through them and break them with a pick.

Q. Don't they show the marks of the wearing of water?

A. I never noticed the marks of the wearing of water.

Q. This pumped well was cut or perforated, wasn't it?

A. Yes, sir.

Q. All the water from the top down, wherever this water gravel was found,--

A. Wherever there was supposed to be water gravel.

Mr. Joliffe: Q. I understood that the witness stated that he had some records at home which he didn't have with him. Is this record which you have discovered during the noon intermission all that you have?

A. No; when I think of it, I know there was the record kept by the engineers when they were running the steam plant and they were obliged to keep a record of the amount of oil used, both lubricating and fuel oil, and also the amount of water pumped, and it was that, I believe, that I referred to, and the record day by day.

Mr. Britt: I was going to ask the witness if he didn't have some more minute record to show the quantity of water pumped from day to day.

A. Since Mr. Joliffe asked the question I remember once during the day (and I also refreshed my memory now--

Mr. Britt: That is what I asked the witness about this morning, and I assumed it would be produced by him. Did you first operate this well with a steam plant?

A. We did for four years, until the fall of 1904, when we

put in a deep well pump with electric power.

Q You got the power from the Ontario Power Company?

A From the Ontario Power Company.

Q During the time you were operating the steam pump, when you pumped at all did you pump day and night?

A We did.

Q All the time?

A Yes, sir; I will say the first three or four xxxxx weeks run the pump never stopped an hour, and after that it was almost continuous run. Of course, we had a few breakages.

Q In answer to Mr. Haskell you agreed to find out the time those breakages caused the cessation of pumping.

A Yes, sir.

Q Since you operated with electric power when you pumped at all did you pump day and night?

A We didx.

Q In 1905, from June 1st to August 1st, you were supplied with water by the Ontario Power Company?

A Yes, sir.

Q From what source? Do you know where that water came from?

A It was supposed to come from the San Antone Canyon into our pipe line.

Q They were giving you water instead of electricity?

A They werxx.

Q And during that time you were not operating the pump?

A Yes; we pumped during that time for to supply the Upland Land and water Company's 10 acres at the well once a month.

Q Once a month during what time?

A 24 hours once a month for the 10-acre orchard.

Q. Was there any other time that you made a similar deal with the Ontario Power Company to exchange electricty for water?

A. In 1906 I think they furnished us with water for one or two months.

Q. And you didn't pump?

A. We didn't pump. In 1907 we began pumping in June-- the first of June.

Q. Whenever you have spoken of pumping you refer to pumping from the Sourwine well, have you?

A. I have; yes.

Q. You stated that in 1905, as I understood you, that the Ontario Power Company had a surplus of water so that it would give you water in exchange for your quantity of electricity which you were entitled to under your contract?

A. Yes, sir.

Q. Has the Ontario Power Company had a surplus of water at other times?

A. I don't know.

Q. In 1906 did they have more water than they needed?

A. They furnished us a head of water for two months.

Q. Are you a regular customer of the Ontario Power Company for water? Is your company a regular customer of the Ontario Power Company for water?

A. No, sir.

Q. Did you ever receive water from the Ontario Power Company other than those months in 1905 and 1906?

A. Mr. Sourwine at one time rented some water of the stockholders of the San Antonio Company to fill out vacancies or

water due to the Upland Water Company stockholders. That was along in the winter time.

Q. From whom?

A. From stockholders of the San Antone Water Company-- parties not using their water from the San Antone Water Company-- and rented water to the stockholders of the Upland Water Company.

Q. I suppose by San Antone Water Company you mean San Antonio?

A. I do; yes, sir; excuse me for abbreviating.

Q. On which side of the San Antonio Creek are your lands situated?

A. We are on the east side.

Q. How far from the creek or wash?

A. About half to three-quarters of a mile. In reference to the question a moment ago, it was in February, 1905, we got about 8 days run of water from stockholders of the San Antonio Water Company to supply stockholders of the Upland Water Company. Instead of running our pumping plant we rented the water.

Q. That was in the winter time?

A. Yes, sir.

Q. Were you irrigating in the winter at that time?

A. It was a dry February and the people wanted to use some water.

Q. In answer to questions by Mr. Haskell you said, as I understood you, that you used about 60 inches of water derived from the Sycamore tunnel on the 200 acres of land, and in addition you used the water you received from the

Bourwine pump on the same 200 acres.

A That might be confusing. There were three water companies: The Mountain View and the Canyon Ridge and the Upland Water Company. Parties, myself among them, holding stock in all three companies, using water on the same land. I have about 2 inches water right out of the three companies to the 10 acres and most of the other parties on the Mountain View tract have similar amounts.

Q You mean to say that you used six inches of water to irrigate 10 acres of land?

A No, sir; I mean that I used 2 inches of water to irrigate 10 acres of land.

Q Howmuch water is used altogether to irrigate that 200 acres of land?

A I would have to tabulate it, I suppose.

Q I don't ask you for any minute computations. But if you were getting 60 inches from the Sycamore tunnel and then whatever you were taking from the Bourwine well, and sometimes it seems to have been 29 inches and sometimes well up toward 40 inches--

A Yes, sir.

Q Now there would be 90 inches of water for 200 acresof land.

A It is not all used on that 200 acres. There is 480 acres in that tract and it isdistributed over that amount instead of the 200. I was a little confused in regard to the number of acres it was used on. I said the Upland water was used on about200 acres. It is not distributed-- every man in the tract hasn't got Canyon Ridge; one man may have Can

yon Ridge and Upland and another man have Upland and Mountain View.

The Court: I understand you to say 2 inches each from the three companies.

A. No; I have a total of 2 inches, and each man has about the same proportion,-- two inches to 10 acres.

Mr. Britt: Did you keep lowering that pump on the Sourwine well from 1901 to 1904? Did you drop it lower and lower in the shaft?

A. We did.

Q. After the water began to rise in the shaft did you then raise it higher and higher in the shaft?

That was the lowest point that you had it in the shaft?

A. The depth of our shaft is 180 feet and we had it down to within 5 feet of that-- 175 feet.

Q. And as the water raised in the shaft you raised the pump?

A. Yes, sir.

Q. Do you know how high the water is in the shaft now?

A. I think it must be about 150 feet from the surface. I don't know. But judging from what it was at the beginning of the pumping season last year.

Q. What was it then?

A. It was about that.

Q. You don't know whether it changed?

A. No, sir; I do not.

Q. At the beginning of the pumping season of 1908 it was about 150 feet below the surface?

A I didn't measure it to be accurate about it.

Q Howdid you get your information that it was 150 feet?

A Knowing the depth of the shaft and where the water stood in the shaft, I come approximately to it.

Mr. Haskell: I understood you to say in answer to a question in crossexamination that I gave you that there was 60 inches of water ~~from the~~ other than the pumped water used on this 200 acres of land during the irrigating season of each year, and I asked you first if there was 100 inches used, and you said there was 60 of that 100 as I understood you. Is that correct?

A I didn't mean that the 60 inches was used on this 200 acres of land alone. The 60 inches from the Mountain View tunnel was distributed over some 480 acres.

Q Where is this 100 inches of water that you spoke of in your direct examination used? On how many acres of land?

A Part of that belongs-- 20 inches or more belongs to the Nevada Water Company--

Q Just confine it to the acres. Upon how many acres of ground is this 100 inches used of which you spoke on direct examination?

A Some 540 acres.

Q Howmany inches of that 100 is used on this 200 acres of groundx over which the Upland Water Company spreads its pumped water?

A I said a while ago that there was 60 inches of it. I had reference to that amount being used on the tract, but it is not all used by the parties owning this Upland water. About 40 inches of it perhaps is used ~~on the 200~~ by parties

Q Then there would be 40 inches used on the 200 acres during the irrigating season? That is correct, is it?

A Perhaps so.

Q Then altogether there would be this 40 inches and this pumped water used on the 200 acres over which the Upland Water Company spreads its water, making 70 inches of water in all? That is approximately correct, isn't it?

A Perhaps so. Allow me to correct myself and inform you--

Q Just correct yourself without informing me.

A Of this pumped water there is about 20 parties-- 200 shares of the 300-- used on that tract. That would make instead of the full pumped head being used on that tract as a continuous head-- it would make only about 20 inches of water used there. That is, 20 days out of 30 days, this pumped head runs on to that tract. The other 10 days it is used on other lands further up, by Mr. Courwine and others that hadn't used the water.

The Court : Evidently Mr. Haskell understands this, but I don't.

A I have tried to make it plain.

The Court: I know. Perhaps it is my stupidity.

A In answer to Mr. Pratt's question I explained that the parties had stock in the three companies which aggregated them about two inches of water right to each 10 acres.. And I explained that we used the water for a certain few days here and a certain few days there. I haven't been able to get the attorneys to understand that.

The Court: Is there any arrangement whereby the water of these three companies is distributed through a common zanjero?

A. It is a common zanjero; yes.

Q. In that respect the three companies cooperate, and no farther.

A. Yes; and no ~~further~~ farther. They use the same distribution pipes.

Q. You spoke some time ago about Mr. Sourwine taking credit for certain water: What has been the practice in regard to that credit for water? Did he have the right to use it later or sell it to someone else?

A. Allow me to explain that. When we organized the company the people of this Mountain View tract wanted about two-thirds of the amount of water that would be pumped from there-- about 20 inches. Mr. Sourwine agreed to take a third of the stock. He wasn't able to use all that stock. For two seasons he rented about four or five days out of his 8 or 9 days of the month to this Mr. Salisbury, and we ran a steam plant, and Mr. Sourwine says "I can't use no water, but I don't want to run it to waste and waste the oil. If I can save the oil by stopping the plant I want credit for it." And while we were running with the steam plant and paying two engineers by the month,-- the engineers' salary went continuous,-- Mr. Sourwine paid the salaries during the stoppage. When he stopped pumping two or three or four days on his time he got credit for the oil not consumed and the lubricating oil not used.

Q. That is the only credit that he actually got?

A. That is the credit. Then with our Ontario Power Company Mr. Sourwine got a contract with them that we were to take 100 days power each year, beginning June first; that we were

to take 20 days power each month-- a minimum of 20 days each month, for the continuous five months. We couldhave 30 days if we chose to use it. And we had water from other sources and it has been so that during the four years since 1905-- the spring of 1905 we have used just about the 20 days each month that we contracted for the power. So we have used about 100 days each year during the last four years. It might be a few days less or a few days more. Previous to that we had run up to six months. In 1902 we ran our steam pump for six months with intermissions of a few days at a time.

Q You say your zanjero represents the three companies?

A Yes, sir.

Q Is it left to him to determine from which source of supply to furnish you?

A No, sir; he furnishes me with my Upland water at the convenience of the pipe line. The Mountain View owning the pipe line has precedence in the pipes, and the other two companies are shifted about, in fact, and at his convenience he can furnish it.

Q Can you then determine just what proportion of your water comes from one source of supply or another?

A I keep an account of each irrigation and I could determine where my water came from; yes; in the last four or five years.

Q And each of the other users can do the same?

A I don't know whether they kept a record.

Q Do you have to depend on the zanjero for information or do you have ways of getting at it independent of the zan-

jero as to where your water comes from.

A When he notifies us he notifies us that we receive Upland water or Mountain View water or Canyon Ridge water.

Q You simply keep the data yourself?

A Yes, sir; he is supposed to keep a record similar to what I have in this book.

Mr. Haskell: Q Now, I understand that 20 inches of this pumped water, according to your last statement, is used on 200 acres of ground of which you have been speaking. That is correct, isn't it?

A Yes, sir; there is about 200 acres on the Mountain View tract that receives water from the Upland Water Company.

Q That is, 20 inches?

A That is about 20 inches; yes, sir.

Q And there is 10 inches of this pumped water used on some other acreage?

A Mr. Sourwine--

Q Is that correct?

A Yes, sir.

Q Where is that used? On how many acres?

A I don't mean to say that it is used every month, because they haven't pumped continuously every day of the month. Mr Sourwine used from two to five days per month on his land a mile to the northeast of the Mountain View tract.

Q And there was one day each month used at the Upland Water Company's well, on that 10 acres.

Q For this 200 acres of ground you pumped 20 days each month?

A Yes, sir.

Q To the full capacity?

A Yes, sir

Q And for 10 other days in the month that well was pumped to its full capacity for other ground, wasn't it?

A No, sir. I said it was pumped from two to three or four or five days , whatever Mr. Bourwine and some of the stockholders otherwise could use.

Q But there was a pumping for other ground over and above the 20 days that it was pumped for the 200 acres of which you have spoken?

A Mr. Bourwine's land not being in the Mountain View tract, it was pumped for his land.

Q And he was entitled to pump 10 days if he wanted to?

A He was entitled to pump his proportion of the stock.

Q Which was 10 days?

A Not always, no. Because he had sold off some stock.

Q Other stockholders were entitled to pump 10 days?

A Yes, sir.

Q And they usually did pump 10 days, didn't they?

A No, sir; they did not.

Q Howoften have they pumped?

A They pumped whenever they needed the water.

Q That would be about how often each month?

A It would be for part of the 10 days for each month-- 3 or 4 or 5 days, whatever they could make use of the water.

Q But not more than 5 days?

A Sometimes it was used continuously. When thepump would break down then we would run continuously to make up the loss of time.

Q. Sometimes they have pumped the full 10 days on this other ground?

A. Yes, sir; some times-- not on the other ground, because the stockholders on the Mountain View would be behind and they would make up time to them.

Q. What I am asking you is how many days these other stockholders than those interested in the 200 acres of which you have been speaking, operated the pump for themselves.

A. They didn't operate it for themselves; the company operated it for them.

Q. Does your record show how many days?

A. The record here shows every hour of irrigation water used from that pump except last year which is not recorded in this book yet.

Q. Do you know what supplies of water this other ground had besides the pumped water?

A. Mr. Sourwine's land didn't have any other supply.

Q. No other supply at all? You mean the land around the well?

A. The land around the well has no other supply.

Q. But there was other land irrigated by this pumped water beside the 200 acres and besides the land that was around the ~~pump~~ well?

A. I said that Mr. Sourwine had 80 acres and there was 40 of it under the pipe that he used pumped water on that when he needed it.

Q. And he used pumped water on that?

A. Yes, sir.

Q. And he used other water on it?

A He at one time had some San Antonio Water Company stock and he used that, but he used about 30 hours to 40 and sometimes 60 hours per month on his grove on this other land from the pump.

Q Do you know how manyn inches of water he had besides this pumped water for his land?

A I believe he only had ay the outside about 8 shares of San Antonio Water Company stock.

Q That would give him how many inches of water?

A I don't know how much he had outside.

Mr. Britt: Q This pipe that leads from the Sourwine well over to Ontario or Upland--

A Mountain View tract.

Q The Mountain View tract is north of Upland?

A It is northwest.

Q As I understood you to say, it is about five miles in length?

A It is about five miles in length. I was going to tell you the number of feet but I forget that.

Q And it is sunk into the ground on the Sourwine place?

A Yes, sir.

Q And remains sunk into the ground from there westward to the Mountain View tract?

A It isunder ground all the way.

Q Always has been?

A Always has been.

Q It runs for some miles west of the Sourwine place through an uninhabited and rocky and barren country?

A You refer from the well westward?

Q Yes.

A The company bought the 20 acres of land to the west of the well. The pipe line comes out of the lower corner and across here. For a ways it is nice level land and then it is the Cucamonga wash, till it, ~~xxxx xxxx~~ comes within quarter of a mile of Euclid Avenue, and there it strikes the orchards and cultivated land and runs through that, crossing the Euclid Avenue half way between 16th and 17th streets.

Q What I am getting at is whether or not the pipe line is laid in the ground part of the way through uncultivated and uninhabited land.

A Yes, sir; desert land.

RE-DIRECT EXAMINATION.

MR. JOLIFFE: Q How many shares is your company capitalized for?

A ~~Xxxxx~~ 300.

Q Of that how much does one share represent? 1/300 part of the water from the well?

A Yes, sir.

Q And when you speak of the 20 inches used on the 200 acre tract you mean the water which the owners of 200 shares would be entitled to?

A That is what I mean.

Q Sometimes that would be more than 1 inch to 10 acres and sometimes a little less?

A According to the pumped head. When the pumped head was more than 30 inches it would be more than an inch to 10 acres. At the present time we pumped 35 inch heads; it is 5 inches more than the 10 shares.

Q You read into the record a few measurements less than 30 inches. That is the reason I mentioned it.

A Yes, sir.

Q At those times, the owners of the 200 shares of stock, their proportionate share was their proportionate share of what was pumped.

A If the head was short they took the head as their proportion.

Q Now at the time when you were supplied with water by the San Antonio Company instead of power from the Ontario Power Company, what season of the year was it? At the time of high water in the creek or when?

A It was early in the season when there was an abundance of water in the creek.

Q At this time when you have spoken of their being 40 inches of water used on this same land, do you mean there was 40 inches used on this 200 acres or on the 480 acres-- 40 inches from the Sycamore tunnel?

A From 1901 to 1904 the Sycamore tunnel was supplying us for that tract less than 28 inches of water-- on a tract of over 400 acres of land, and then thepump head from the Sourwine well was used there also.

Q I inquire of the time since that-- since 1905 or 1904 when you say you have been getting more water from the Sycamore tunnel, and you believe 40 inches of water that was usedon some place on that 480 acre tract. Do you mean to say that was used on the 200 acres or was it usedon the entire 480 acres?

A There was about 60 inches of water used on the entire 480

acres.

Q And was the proportionate amount used on the 200 acres?

A There was a proportionate amount used on the 200 acres.

Q And only a proportionate amount?

A Only a proportionate amount .

Q That season of the year did you get that 60 inches? During the summer season or during times of high water?

A The last four years we had the full head of water from the Mountain View wellsx.

Q This pipe line that runs from the Sourwine well across Euclid Avenue is an underground pipe line?

A Yes, sir.

Q That season of the year was that pipe line laid?

A That was laid between the last of May and the 19th of August in 1901.

Q What roads did it cross?

A It crossed Euclid Avenue and 16th Street, San Antonio Avenue and Mountain Avenue.

Q On those roads and streets, what is the extent of the travel on them?

A Euclid Avenue and 16th Street and San Antonio Avenue have quite a heavy traffic. Mountain Avenue is only occasional.

Q And during the whole distance, wherever it crossed the roads and otherwise, what was the nature of the work done in the way of being concealed or otherwise?

A The pipes were all buried underneath the ground to be out of the way of cultivation or plowing.

Q But at the time of doing the work?

A. It was out in public and open and everybody could see it.

Q. Howabout the marks of where the pipe line extended? Were any marks left above ground that were discernible to anybody looking?

A. I can trace the pipe line clear across that desert yet from the evidence of the ditch being dug.

Mr. Pritt: Q. These streets and avenues which you have mentioned are over at Uplands, are they?

A. Yes, sir.

Mr. Joliffe: Q. And are not part of them in the Cucamonga region?

A. This road is in the Cucamonga country.

Q. What road is that?

A. That is known as Carnelian Street.

Q. It is marked on exhibit 77 Carnelian Street?

A. We were about three months laying that pipe line, and anybody who wanted to could see it.

Q. Were there many people around during the time you were laying it?

A. There was a gang of 10 or 15 men at work digging out that cement ditch and hauling pipe and doing the necessary work, and it wasn't done in the night time at all-- no part of it.

Q. You may state whether or not it was a matter which attracted a good deal of attention at that time and people were observing it as to whether or not the putting down of that well attracted attention-- whether it was a matter of experiment in the developing of water, and on that account attracted attention?

Mr. Waters: I want to make just one objection. That is, that the question is leading.

The Court: No doubt of that.

Mr. Waters: And it is objected to on that ground.

The Court: Sustained.

Q. Now you may state if you know what was the general public sentiment in that community in regard to that well, as to whether or not it was being watched to see what the result of it would be.

Mr. Britt: That is objected to on the ground that it calls for the conclusion of the witness or his opinion of the public mind, and that it is irrelevant and immaterial.

The Court: Sustained.

RE CROSS-EXAMINATION.

Mr. Haskell: Q. Now, as I understand you, according to the last statement that you have made, 20 inches of pumped water was used on this 200 acre tract.

A. No; 20 days out of the month the water was used on that tract out of this pump.

Q. And that amounted to about 20 inches?

A. Yes, sir.

Q. Now you say there is a certain amount of water, 60 inches, used on 480 acres, of which this 200 acres gets its proportionate part.

A. Yes, sir.

Q. Now is there any other water in addition to that used on this 200 acres?

A. There is some parts that have a little water out of the Canyon Ridge well.

Q How much water is that?

A It pumps about a 20-inch head.

Q And they operate it right along in the irrigating season?

A They do.

Q And that is used on the 200 acre tract?

A Not all of it.

Q What proportion of it?

A Well, about one-third perhaps.

Q And where is that well located?

A That is located on 21st Street and Mountain Avenue, or a few feet from it.

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J. J. ATWOOD.

J. J. ATWOOD, a witness produced by defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Mr. Joliffe: Q Where do you live?

A Upland.

Q You are the J. J. Atwood named as one of the defendants in this case?

A Yes, sir.

Q I will ask you if you know the location of the well sometimes spoken of as the Rubio well.

A Yes, sir.

Q I will ask you if you now own theland in that vicinity?

A I do.

Q Have you a deed to it?

A I have.

Mr. Joliffe: I offer in evidence a deed from W. T. Locke to J. J. Atwood and P. E. Walline, dated March 24, 1906, and recorded April 7, 1906, in Book 375 of Deeds at page 111, of the records of this county. (Reads deed, as follows:)

DEFENDANTS' EXHIBIT "B"

Know all Men by These Presents, That I, W. T. Locke of San Bernardino County, California, in consideration of Sixteen Thousand dollars, the receipt whereof is hereby acknowledged, grant to J. J. Atwood and P. E. Walline also of San Bernardino County, California, all that real property situate in the said County of San Bernardino, State of California, bounded and described as follows:

Lot eleven (11) and part of Lots five (5) six (6) and

twelve (12) in Block twenty)20) of the Tract of Land of the Cucamonga Homestead Association, according to a plat recorded in Book 6 of Maps at page 46 of the records of said County, described by metes and bounds as follows: Beginning at the North East Corner of said Lot eleven, thence North 104°55' West along the north line of said Lot 11 and lot 5, fourteen hundred and fifty nine and eight tenths (1459.8') feet, to a corner stake, thence South 15°31' East six hundred and sixty (660) feet to a corner stake, thence South 44°20' East seven hundred and twenty five (725) feet to a corner stake on the South line of said Lot 12, thence South 105° East along the South line of said Lot 12 eleven hundred and seven (1107) feet to the South East corner of said Lot 12, thence North 15°31' West along the East line of said Lot 12 and 11 thirteen hundred and twenty)1320) feet to the place of beginning, containing 41.6 acres, more orless, reserving therefrom a right of way for a road between Lots 11 and 12 and between and across Lots 5 and 6, as said road now exists, and subject to a mortgage for $15000 now on the property which mortgage grantees assume as part of the purchase price hereof, and subject also to all the rights and interests heretofore conveyed to the San Antonio Water Company.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

Witness my hand this twenty fourth day of March, 1906.

(Signed) W. T. Leeke (Seal)

State of California,)
County of San Bernardino) ss.

On this 26th day of March, in the year one thousand, nine hundred and six, before me E. H. Joliffe, a Notary Public in and for the County of San Bernardino, State of California, residing therein, duly commissioned and sworn, personally appeared W. T. Leake known to me to be the person whose name is subscribed to the within instrument, and he acknowledged to me that he executed the same.

Witness my hand and official seal at said County:

E. H. Joliffe

Notary Public in and for the County of

(Notarial Seal) San Bernardino, State of California.

Endorsed:

Recorded at Request of J. J. Atwood Apr 7 1906 at 10 Min. past 8 A. M. in Book 375 of Deeds Page 111 Records of San Bernardino County.

J. F. Johnson, Jr., County Recorder

Mr. Britt: We have no objection to the deed but we reserve the right, the same as we did in case of exhibit 1, to require proos of the origin of the title in case we should deem it necessary.

Mr. Joliffe: I now offer a deed from F. S. Walline and Jennie F. Walline to J. J. Atwood, dated December 13, 1906, and recorded January 4, 1907, in Book 384 of Deeds at page 251.

Mr. Britt: no objection, with the same understanding.

DEFENDANTS' EXHIBIT "C"

Bargain and Sale Deed and Quit Claim.

This Indenture, made the Thirteenth, day of December, in the year of our Lord one thousand, nine hundred and Six, Between P. E. Salline, and Jennie E. Salline, husband and wife, of Upland, Calif., the parties of the first part, And J. J. Atwood, of Upland, Calif., the party of the second part,

Witnesseth: That the said parties of the first part, for and in consideration of the sum of One Dollar Gold Coin of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents, grant, bargain and sell, convey, quit claim and confirm, unto the said party of the second part, and to his heirs and assigns forever, all those certain lots, pieces, or parcels of land, situate, lying an being in the County of San Bernardino, State of California and bounded and particularly described as follows, to-wit Lot Eleven, (11) and a part of Lots five, (5) Six, (6) and Twelve, (12) in Block Twenty, (20)- the same being a part of the Cucamonga Homestead Association Tract, according to a plat recorded in Book 6 of Maps, at Page 46, of the records of said County, and more particularly described as follows to-wit: Beginning at the North East Corner of said Lot 11 thence North 104°55' west along the North line of said Lot 11, and Lot Five, (5) Fourteen hundred fifty-nine, and eight tenths (1459.8) feet to a corner stake, thence South 15°31' East, Six hundred, and sixty (660) feet to a corner

stake, thence South 44 20 East Seven Hundred, and twenty-five (725) feet to a corner stake on the South line of said Lot 12, thence South 105° East along the south line of said Lot 12, Eleven hundred, and seven (1107) feet to the South East Corner of said Lot 12, thence North 15°31' West along the East line of said Lot 12 & 11, Thirteen hundred, and twenty (1320) feet to the place of beginning containing Forty-one, and six tenths (41.6) acres more or less. Reserving therefrom a right of way for a road, between Lots 11, and 12, and between, and across Lots 5, and 6 as said road is now located. The property being subject to a mortgage of $15000. the payment of which is assumed by the Grantee. Also subject to the rights, and interests heretofore conveyed to the San Antonio Water Company.

There is also hereby conveyed to grantee the following, viz: A strip of land Thirty-three (33) feet wide, lying immediately NORTH of and adjoining Lots 5, and 11 in Block 20, of the above, and foregoing described tract.

This deed also carries with it right of electric power secured by Grantor, and Grantee from the Ontario Power Company, bearing date May 1, 1906, and subject to the terms, and conditions mentioned in said contract.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

To have and to hold, all and singular the said premises, together with the appurtenances, unto the said party of the second part, and to his heirs and assigns forever.

In Witness Whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

Signed, Sealed and Delivered) in the presence of) P. E. Walline (Seal) Jennie A. Walline (Seal)

State of California)
County of San Bernardino) ss.

On this 31st day of December, in the year nineteen hundred and six, before me, A. H. Lawrence, a Notary Public in and for said County, residing therein, duly commissioned and sworn, personally appeared P. E. Walline, and Jennie A. Walline his wife, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

Witness my hand and official seal.

A. H. Lawrence
(Notarial Seal) Notary Public in and for said County.

Endorsed:

Recorded at request of J. J. Atwood Jan 4 1907 at 55 min past 3 P. M. in Book 384 of Deeds Page 251 Records of San Bernardino County.

J. F. Johnson Jr.
County Recorder.

Q Mr. Atwood, this well which you have spoken of as the Nubio well, was that located on this land or where was it located?

A It was located on the western end, half way between the north and south.

Q Do you know when that well was put down?

A I do not; it was there when I bought the place.

Do you know how long it had been there before that time of your own knowledge?

A I think about four or five years, but I am not sure.

Q What amount of water was obtained from that well, if you know?

A About 25 to 30 inches, that is all the pump would pump.

Q There is a pumping plant there too?

A Yes, sir.

Q Which you bought along with the land?

A Yes, sir.

Q What was done with the water that was pumped from that well?

A Used on that place.

Q What is that place planted with?

A Oranges.

Q What amount of water is needed for the irrigation of that place?

A 8 inches continuous flow.

Q What amount of water has been used there? About that amount?

A About that amount; yes, sir.

Q Have you any other water supply for that place?

A No, sir.

Q What is the condition of that well now?

A That well caved in.

Q When?

A A year ago last summer-- along about August.

Q What have you done for water since?

A I rented water last year and I am putting down another well.

Q You are putting down a well on the same tract?

A Yes, sir.

Q What is your intention regarding the well you are putting down?

A To pump water for the 40 acres.

Q How much do you claim the right to pump, or expect to pump?

A I expect to pump the equal of 8 inches continuous flow.

CROSS EXAMINATION.

Mr. Britt: Q I understand from these deeds that you and Walline first bought this tract of land from Leeke?

A Yes, sir.

Q That was in 1900?

A Yes, sir.

Q Had you any acquaintance with the land before you bought it from Mr. Leeke?

A I knew where it was.

Q How long had you been acquainted with the Rubio well on the land?

A Well, ever since it was put down. I sold lumber for the shaft. I don't know just when it was exactly. It was in

the neighborhood of four years or so ago; I can't say exactly.

Q Was that a well sunk from the bottom of a dug shaft?

A It was a shaft dug down and a drove well below that.

Q At the time you purchased the land in 1906 was the well in commission or being pumped?

A Yes, sir.

Q Who was pumping it?

A I suppose they had pumped it. Whether the Water Company pumped it the year before I got it I don't know. I suppose they did. We commenced pumping it as soon as I got it and it was in good working condition.

Q In what month did you take possession of it in 1906?

A In March.

Q You and Mr. Walline jointly?

A Yes, sir.

Q Did you or he or both of you live on the place?

A No, sir.

Q Was the place occupied at all by anyone?

A We hired a man and made him move on the place as soon as we bought it.

Q Had it previously been unoccupied?

A Nobody had been living on it.

Q Do you know how long it had been since anybody had lived on it?

A No; I don't remember just now long. Possibly two years. I don't know, I am sure.

Q Was the well equipped with a pump at the time you bought the land?

A Yes, sir.

Q What sort? Steam, or how was it operated?

A It was operated by electric power.

Q From what source was the power derived?

A I got the power from the Ontario Power Company.

Q You used power from that source ever since when you pumped the wells?

A Yes, sir.

Q Did you make any test of the well at the time or before you purchased to see how much it would produce?

A No, sir.

Q Did Mr. Locke tell you what the capacity was ?

A The capacity of the pump was supposed to be 30 inches.

Q Was that what Mr. Locke told you?

A Yes, sir.

Q Didyou do any experimenting to determine?

A No, only as natural observation would indicate that that is about what we were pumping. I never measured it.

Q At that time was the well connected in any way with a pipe line of the San Antonio Water Company?

A No, sir.

Q Had there been any such connection previously?

A I think there had, but I wouldn't say for sure. I think there had. I won't say for sure.

Q Were there any remains of a pipe or flume or other conduit on the ground?

A There was a pipe line runs past it about 20 or 25 feet from the well.

Q Was that the pipe line of the San Antonio Water Company?

A Yes, sir.

Q It extends eastward to the Haskell well?

A Yes, sir.

Q Has there any remains of any pipe or flume running or extending from the pump of the Rubio well on your land to this pipe line?

A No.

Q You don't know whether there had been previously or not?

A No, sir.

Q During the time that you have owned the land or since March 1906 has any water been pumped from that well or turned into the line of the San Antonio Water Company?

A No, sir.

Q Had you ever made any measurements of the depth of the water in the well?

A I did not.

Q At any time?

A No, sir.

Q Either before or after you bought the land?

A No, sir.

Q Do you know now at what elevation the water stands below the surface in the well?

A No; I do not. The well caved in.

Q That was in 1907, was it?

A Yes, sir.

Q What was the depth of that shaft?

A I am not sure but my impression is that it was about 90 feet.

Q Do you know what the depth of the well was or is?

A It is all filled up now. It caved in.

Q The pipe wasn't crushed?

A The pipe was pulled out when it commenced caving so pulled the pipe and the pump out.

Q You pulled the pipe and the pump out of the well?

A Yes, sir.

Q How much pipe did you pull out of the well?

A About 100 feet. I don't know. I was measuring it up yesterday to see how much I had and there was about 100 feet laying there. I wasn't at the place when the pipe was pulled out. I own a lumber yard in Upland and I was busy and I sent men up to have the pipe pulled out and I paid no attention to it. I have been looking to see how much old pipe I had.

Q What was the diameter of the well that was caved in?

A 12 inches, I think. We never got the casing out. I don't know whether it was 10-inch or 12- inch.

Q What is the acreage in the piece of land that you bought from Mr. Leeke?

A 41.6 acres.

Q You are the sole owner of it now?

A Yes, sir.

Q What is it planted to?

A Oranges.

Q The whole of it?

A Yes, sirx.

Q Have you kept an account or record of the quantity of water thatyou pumped during the years since you have owned it?

A No, sir; we pumped as we needed the water for irrigating. I never kept any measurements at all.

Q Do you know how many times each year you pumped? Have you any record of the time you pumped?

A No, sir.

Q You estimate that 8 inches was the quantity necessary for your orchard?

A Yes, sir.

Q Do you use the water for domestic purposes as well?

A For the man that lives at the house, yes.

Q You say that you rented water from some source.

A Yes, sir.

Q From whom did you rent it?

A From the Ontario Power Company or the San Antonio Water Company. I don't know which one it came from.

Q With whom did you make your arrangement?

A I made the arrangement with the San Antonio Water Company.

Q Did you have a written contract?

A No; there was no written contract-- Well, I said I rented the water from them, but I didn't. I rented the water that was owned by other parties that had stock in the San Antonio Water Company that were not using their water. I rented 5 shares from the Huss Lumber Company. The balance of it I forget just how many shares I have rented, 42½ shares-- the balance of it I had rented from L. T. Blakeslee personally and L. T. Blakeslee trustee.

Q Where did that water come from?

A They had San Antonio Water Company stock. That was water

that they didn't want to use.

Q You stated that you were boring or sinking another well.

A Yes, sir.

Q How far from the old one?

A 40 rods.

Q In which direction?

A North.

Q Directly north?

A Straight north.

Q Is it in the wash or on the bank?

A On the bank.

Q To what depth have you bored that well?

A 345 feet the man telephoned me yesterday.

Q Have you a log of the well?

A No, sir.

Q Is the drilling now going on?

A Yes, sir.

Q Has a log been kept of it at all?

A He was to keep it. I don't know whether he has. I have only been up there twice while he was putting down the well.

Q The old Rubio well which you say has caved in, was that in the wash or on the bank?

A It was standing on the side of the bank, down off of the highest bank; not clear down in the wash but right in the edge of the wash.

Q Did you at any time since you purchased that land measure at all the depth from thesurface of the ground to water?

A No, sir; I never did.

Q Do you know anything about the management of the well

before you bought the land in March, 1906?

A. I don't know.

Q. Who is drilling that new well for you?

A. Lapp-Gifford Company of Los Angeles.

Q. Who is the person in the actual charge of the drilling?

A. His name is Crandall. I don't know his initials.

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F. E. TRASK.

F. E. TRASK, heretofore sworn and examined, being recalled by defendants, testified as follows:

DIRECT EXAMINATION.

Mr. McKinley: Q. Mr. Trask, you have a couple of maps which have been prepared for the purposes of this case?

A. Yes, sir.

Q. Will you take one of them and explain it?

A. This map has a title as follows: Map of Ontario Colony and Cucamonga Red Hill District, San Bernardino County, Cal. Showing ranch lines and ownership of lands. Scale 1320 feet to one inch. This map contains the exterior boundaries of the old Cucamonga grant and they are represented by a hatched line as shown on the plat, with the station numbers of the old Cucamonga grant written at the proper places, and the word "Rancho Cucamonga" written through that tract. The Ontario Colony lands are shown and blocked out by streets only, and the lands themselves are colored in green. The Cucamonga Red Hill section is colored different, with the

different ownerships. The lands of the Cucamonga Land and Irrigation Company in section 4, township 1 south, range 7 west, are colored in pink. The lands of the Cucamonga Vineyard Company in sections 3, 4, 9 and 10/ township 1 south, range 7 west, are colored in blue, while the lands of the Cucamonga Water Company-- the 90-acre and the 35- acre tract are colored in yellow, situated in sections 3 and 4, 1 S., 7 W. The lands owned by the San Antonio Water Company north of 16th Street are colored in green, but I have a border in red; and in each of the tracts the name of the company owning the same is written in in full. The tract of land known as the Rubio tract lying between the Haskell wells and the original 16th Street wells is colored in green with a blue border around it, the object being to show the different ownerships in the lands but to maintain the same coloring,-- for the reason that the water rights of that tract ar are still in the name of the San Antonio Water Company. The lands of the Ontario Power Company are in the general representation of green in the map and have not been delineated, and I want permission of the Court to pencil in the limits of the Ontario Power Company's lands, which I have failed to do. This map, further, shows the location of the main pipe lines, the one at the north taking the water from the wells known as the 16th Street wells, including the Haskell wells, the same being north of the well and above 16th Street, showing a diagonal line passing westerly and southerly from the 16th Street wells. This diagonal line delivers water from the16th street well westerly into the colony-- pumped water-- at points where this diagonal line

intersects the north and south line of the distributing system of the Colony lands. Another pipe line further south is represented here as taking water from the mouth of the Radie tunnel or Cucamonga tunnel and in like manner transports water westerly and southerly across the colony to the intersecting distributing lines of the San Antonio Water Company. The location of the "I" tunnel and Cucamonga tunnel are shown on the map on the 90-acre tract of the Cucamonga Water Company and the "Y" tunnel on the lands of the Cucamonga Irrigation Company on section 4. Likewise, theLone Star tunnel No. 1 in the southwest corner of section 34, township 1 north, range 7 west, and the location of Lone Star tunnel no. 2 with its outlet near the center of section 3, township 1 south, range 7 west as shown. This map shows the streets and avenues of the Ontario Colony and shows the three transcontinental railways through the colony and also the townsites of Upland and Ontario.

Q. It is a correct map of what it purports to delineate?

A. It is .

Mr. McKinley: We offer the map in evidence as Defendants' Exhibit "L"

Q. What is the other map that you have? Explain what that map is.

A. This map bears the title as follows: Map of Cucamonga Red Hill District, showing wells, pumping plants and tunnels, San Bernardino County, Cal. Scale 300 feet to one inch. Prepared in 1904. And it is a map of sections 33 and 34,

township 1 north, range 7 west, and sections 3, 4 and 5 or parts of them of township 1 ~~north~~ south, 7 west, and shows in greater detail the location of the pumping plants of the 16th Street wells, the Lone Star tunnels, the "Y" tunnel, the Radie tunnel and the Red Hill section. The map has the topographic contours which are contained on the map presented by plaintiffs and prepared by Mr. Wright, and are copies from that map as far as those contours are concerned. The map likewise contains the location of all the different wells in that area, and at each of these wells the elevation, the number and name or letter of the well, and in most cases the date when the well was bored are written. The same method of coloring has been adopted as was adopted on the preceding map, so that each individual ownership has its own particular color, with the name of the owner written in theparticular tract.

Q. That is a correct map of what it purports to delineate?

A. It is.

Mr. McKinley: We offer that in evidence and ask that he be marked DEFENDANT' EXHIBIT "E".

Mr. Britt: Just one moment before it is received in evidence. From what source, Mr. Trask, do you get your information about the elevation shown on the contour lines and other elevations?

A. The contour lines were copied from Mr. Wright's map of that section, which was used in the former litigation over water rights in the Red Hill section, back in the early part

of the year 1900.

Mr. McKinley: That is, this map?

A That is a copy.

The Court: I don't understand that that is exactly the same map but it is in part the same.

A I have taken such data from that map as I chose to use in the platting of this, assuming that it was correct.

The Court: We were referring to the map on the board which was used in a former trial.

Mr. Britt: Then the contours further north were obtained from what source?

A I think the contours further north were obtained from some work done by Mr. Charles Saunders away back in 1904, as I recollect. The well elevations in part were obtained by myself personally in 1900 and the balance was filled in by one of my assistants some time in 1904. They are all from the same bench marks and have been checked.

Q Where is the original plat from which these contours further north,-- say this is Base Line; part of that is taken from Mr. Wright's map. But above the San Antonio Water Company's 16th Street wells have you the original plat of those contours?

A My recollection is that they were just penciled on a piece of brown paper and traced on a tracing from that. They were from notes of Mr. Saunders out in the field some time in the summer months of 1904. I had Mr. Saunders at the Red Hill at that time for many months, at the time Mr. Reed was there, and he worked in my office, and this was traced from a pencil drawing which was not preserved.

Mr. Haskell: Q. Do you know whether or not the bench marks that you used in surveying the elevations of the wells was the same bench marks used by Mr. Wright in his contour lines?

A. I think there is some little difference. I would judge so from some of the well data that we have.

Q. So that the bench marks showing the elevations of the wells might not correspond exactly with the contour lines?

A. Yes, sir. Mr. Wright or his men may have taken a different point at the well for his reference point, but whatever it may be, it would simply be a constant.

The Court: Q. Could that be ascertained?

A. If there are any discrepancies in measurements, any marked discrepancies,-- we could probably trace it by comparing my bench marks elevations and Mr. Wright's bench mark elevations.

Q. We could probably avoid confusion--

A. I haven't noticed any confusion.

Mr. Haskell: Is there any way to ascertain whether there is a difference?

A. I could compare notes with Mr. Wright.

Mr. McKinley: You may do that, Mr. Trask. I have offered the map. (Marked Exhibit "L".)

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B. C. SHEPHERD.

B. C. SHEPHERD, a witness produced by defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Mr. McKinley: Q State your name.

A B. C. Shepherd.

Q Where do you reside?

A Ontario.

Q How long have you resided there?

A 25 years.

Q Have you occupied any position in connection with the San Antonio Water Company?

A Secretary.

Q During what time?

A Oh, for about fifteen years, but not for the last two years and a half.

Q Commencing then at what date?

A I don't know exactly.

Q Probably your minutes would show.

A Those minutes do not go back far enough.

Q About when?

A It would be about 18 years ago.

Q When did you first begin to have any familiarity with the section where the waters are in dispute in this case?

A About 1896.

Q When did the San Antonio Water Company first begin to do anything in the way of securing or taking water from the section in the neighborhood of the "I" tunnel and of the Cucamonga Fruit Land Company's land-- or Water Company?

A In 1899, about February, the negotiations began.

Q Whom were those negotiations with?

A Mr. Stowell.

Q And anyone else or any other company?

A The Cucamonga Fruit Land Company.

Q At that time, Mr. Shepherd, did you visit that locality?

A I did.

Q And in connection with those negotiations?

A Yes, sir.

Q What did you observe there with reference to the waters which were being considered by your company at that time of your purchase?

A Mr. Stowell had a well there that he had sunk in 1896. There were other wells there belonging to the Cucamonga Water Company. There was also a tunnel there that water was flowing out of.

Q Did you have any opportunity to observe what water there was in the well that Stowell had sunk?

A Yes, sir.

Q What observations did you make?

A We just looked at it from the surface of the ground as it was shown to us by Mr. Stowell, and the water running from it.

Q Previous to that time had the San Antonio Water Company received any waters from that well or tunnel?

A They had.

Q When?

A In 1896, beginning about the month of August.

Q Where did that water come from if you know?

A The '96 well.

Q What amount of water did you receive at that time?

A 30 inches.

Q How did you receive it? In what way?

A We rented it from Mr. H. W. Stowell.

Q What use was made of it?

A It was turned into the general system of the San Antonio Water Company and used for irrigation and domestic purposes.

Q Do you know whether any water from that well was being used by anyone else during that time?

A I do not know.

Q You used that water during this portion of the summer of 1898, as I understand you?

A Yes, sir.

Q Any after that? I mean under the lease?

A We used that water away into the next year or next spring some time. Probably April or May.

Q Do you know in what way that water was taken from the well?

A I do not remember.

Q You continued to use that, until another agreement was made with Stowell and the Fruit Land Company did you, that is you continued to use it under a lease?

A We continued to use that water as rented water, up to the time that we purchased the water outright.

Q The company entered into a contract at some time that winter for the purchase of the water?

A They did.

Q Can you state what that date was?

Mr. Britt: That was a written contract.

Mr. McKinley: I haven't the original here: have you any objection to reading from the minutes?

Mr. Stephens: With the right to compare with the original afterwards.

Mr. McKinley: Certainly.

Q You have the minutes of the company which were kept by you?

A I have.

Q Will you take those minutes and read from them what there is in regard to the negotiation the purchase and the contract.

Mr. Britt: Let us see the minutes.

Mr. McKinley: Certainly; I will show them to you when I find the place.

Mr. Britt: Before you begin to read let us see the book which you propose to read from. Let us see this entry which you propose to read. We understand that you are offering here, this agreement, type-written, pasted into the volume produced by the witness, purporting to be dated April 8, 1899, between the Cucamonga Fruit Land Company, and the San Antonio

Water Company. That is the agreement you are offering in evidence?

Mr. Mc.Kinley: Yes, sir.

Mr. Britt: We object to the document as hearsay, incompetent and irrelevant. It does not seem, so far as we can make out, to affect the plaintiffs in the case, or any of them, or to affect any one with whom the plaintiffs are in privity, or any predecessor in interest of the plaintiff, so far as we can discover here. It is an agreement, apparently for the sale of water from the Cucamonga Fruit Land Company to the San Antonio Water Company; it may be that it has some pertinence to be hereafter shown, but at the present time so far as we can discover, it is not pertinent and relevant, and is incompetent.

Mr. Mc.Kinley: The objection does not go to the signatures I suppose.

Mr. Britt: No, that was not executed, but I see that it was executed by the parties.

Mr. Mc.Kinley: We also desire to offer theminute entry showing that the San Antonio Water Company - -

The Court: In your objection you have raised the ground that it was not competent.

Mr. Britt: I did not mean to include in that, that this copy does not seem to be signed by anybody.

Mr. Mc.Kinley: I will have the originals here.

Mr. Britt: That specific objection is not made.

The Court: The objection is overruled.

Mr. Britt: We except to the ruling of the court.

Mr. Britt: You are offering this as a part of your claim

of your title, your claim to the water flowing on the west side of the red hill?

Mr. Mc.Kinley: Yes, sir.

The minutes show the authorization for the execution, and then the agreement itself. I suppose reading will be waived.

The Court: Will the book remain here, or do you deire to have it to go into the record?

Mr. Stephens: If I mistake not it is set out in full in the answer.

Mr. Mc.Kinley: Yes, it is set out in the answer; I wasn't aware of that being so; I didn't know that. I don't know that it is even necessary to offer it.

It has been offered and admitted, and its execution admitted, and the readin waived, and you have agreed that the copy is in the answer, subject to correction?

Mr. Stephens: Correct.

Mr. Mc.Kinley: Then we offer the deed from the Cucamonga Fruit Land Company, to the San Antonio Water Company, which is also set up in the answer; and the agreement between the Cucamonga Fruit Land Company, and the San Antonio Water Company, and Stowell, which is also set up in the answer.

Mr. Britt: What is the date of the deed?

Mr. Mc.Kinley. April 8th, 1899.

Mr. Britt: We object to the reception in evidence of the deed, as being hearsay and irrelevant.

The Court: What is the point of your objection that it is hearsay?

Mr. Britt: Well it is between parties other than the

defendants in the case.

The Court: The objection is overruled.

Mr. Britt: Exception.

Mr. Mc.Kinley, Q After the execution of these papers, of those deeds and agreements which I have just introduced in evidence, what did the San Antonio Water Company do with reference to taking the water, described in those deeds and agreements?

A Mr. Stowell or the Cucamonga Fruit Land Company, immediately commenced the building of the pipe line; and as soon as that pi e line was finished the water - what water there was there was delivered to the San Antonio Water Company. Mr. Stowell had charge of it, of the building of the pipe line; I think it was the Cucamonga Fruit Land Company that built the pipe line.

Mr. Britt, Q Was it Stowell that built the pipe line?

A Mr. Stowell.

Q Have you anything showing the date when that was completed records from which you can refresh your recollection, or are you able to recollect it?

A I couldn't give the dates but I know the work was done very quickly.

Q What do you mean by very quickly? About how long was it before you received the water through that pipe line?

A I can't recall the exact dates, but it was probably two or three months.

Q And did you continue to receive water through that pipe line then, from that time on?

A Yes, sir.

Q About what quantity of water did you receive through that pipe line from the completion thereof?

A I think there was about 90 inches delivered as soon as the pipe line was finished

Q And how long did the delivery of that amount continue?

A I couldn't give the times; Mr. Stowell was developing water there, and it was gradually increased until they got the total amount.

Q About when did you first receive the total amount?

A About - -

Mr. Stephens: Do you mean the 100 inches? 100 inches wasn't it?

Mr. Mc.Kinley: 150 inches.

Mr. Stephens: By both agreements.

Mr. Mc.Mc.Kinley: Yes. The total amount was 150 inches by the two agreements, I understand: Mr. Shepherd, is that the amount you are referring to that you received?

A 150 inches, that is correct.

Q And about when did you get that?

A I couldn't give the date offhand without hunting up the records.

Q Have you anything in your records that will show that? These records were made by you as I understand?

A They were.

Mr. Britt: If Mr. Shepherd, the witness, is refreshing his memory by reference to documents here, papers, I would like to see the instruments.

Mr. Mc.Kinley: Certainly; we are perfectly willing.

Mr. Britt: Before he reads from them.

Q Anything you find that you are going to refresh your memory by, counsel would like to see it first, so just pass it over. We are asking for a date now, Mr. Shepherd. When was it you first received the 130 inches, refreshing your recollection - -

A During the development of the water by Mr. Stowell to increase the amount, I remember distinctly that there was a variation in the flow; that at some times we got more than others; I remember distinctly that sometime during that summer we received a total of 130 inches at some times; there is a report on the records here which shows, from the engineers, which shows a lesser amount. I can't say exactly what time, but I do remember that we received 130 inches at sometime during that summer.

Q Refreshing your recollection from that, what was the amount that you were receiving, and what was the date, refreshing your recollection?

A This date was August 20th.

Q What year? 1899?

A 1899. And the measurement shows 110.60 inches

Mr. Mc.Kinley. You say you are willing to have that report go in?

Mr. Britt: Why yes: I think there will be no objection.

Mr. Mc.Kinley: Then we will offer it in evidence.

Mr. Britt: Subject to the same objection that was made to the other deeds,- that they are transactions between third parties which do not affect the defendants.

The Court: The objection is overruled.

Mr. Mc.Kinley: The report offered in evidence, s read on

the minutes is as follows: "Ontario, Cal. August 25, 1909. R.C. Shepherd, Secretary S. A. Water Company: Sir: I have this day measured the water in the long tunnel No. 2 of the Cucamonga Fruit Land Company, at a point some 50 feet below the upper shaft, weir 33 inches ~~width~~ wide, depth of .35 feet on crest; time, 2:30 P.M. Amount of water, 92.40 inches, without taking into account the accelerated velocity or a stage around the sides, both of which items would increase the above quantity. All of this water raises and flows from the body of land called for in contract, between the Cucamonga Fruit Land Company and San Antonio Water Company, made in April 1909.

Also at 3:40 P.M. Of this date, there was flowing over weir, at cement box at east line of the Ontario lands, weir 40 inches, depth over crest .346; quantity equals 110.60 miners' inches. Respectfully, F.T. Wright. Member American S. C. E." - standing for Society of Civil Engineers, I am informed.

Mr. Britt: I ask leave to have an exception noted to the ruling of the Court, admitting this in evidence; the objection was on the same ground,- that it was hearsay as to plaintiffs in the case.

The Court: Ofcourse if these matters are not connected, a motion to strike out will be entertained.

Mr. Britt: I understand.

Mr. Mc.Kinley, Q Have you any other memorandum from which you can determine at any particular time an amount that was being received under this contract?

A I can't remember of any at the present time.

Q Now, these were thefirst waters which the San Antonio

Water Company obtained from any of the wells or watersources in controversy here, were they?

A The pumped water from the 16th street well in 1896.

Q Now, with regard to that well, here was that well situated?

A North of the Base Line.

Q Can you designate that on one of these maps?

Mr. Waters: I think we are switching here from mere memoranda, and these books. If this gentleman knows about that water, as a matter of independent fact of his own knowledge, that is all right.

Mr. Mc.Kinley: That is what I have asked for. I left the books and went to the question of the other waters here

Q You were secretary of the company at the time?

A Yes, sir.

Q And knew about it yourself?

A I did.

Q Now, the well to which you have referred as having been pumped in 1896, is the one designated on this plat Exhibit E, as well No. 3?

A It is.

Q Now, will you state all that you know about the history of those operations of your own knowledge?

A That well at that time was owned by Frankish or Stamm, or the Ontario Land and Improvement Company; it was called the Frankish and Stamm well, and we got permission from them to pump that well.

Q And when was it you pumped it?

A It was in the Summer of 1896.

Q About how much water did you get at that time?

A About 30 inches.

Q And how long did you continue to pump that well?

A I couldn't give the exact time, but we pumped it several months anyway, during the summer season.

Q Of 1896?

A 1896.

Q Subsequently did you take water from there?

A I don't think so.

Q Do you mean by that that you didn't take water from it during the ownership of Frankish or Stamm, or that you didn't take it ever?

A Previous to that date?

Q No, subsequent to it?

A Oh, subsequent to it; we have taken lots of water from it since that time.

Q Well, that is what I want to know about. I want to get the whole history of your getting water from it. You first leased water from it, leased the use of the well, and pumped that season: Subsequent to that time did the San Antonio Water Company ever take water from that well?

A They did.

Q When?

A In 1898.

Q About how much did they take in '98?

A About the same amount.

Q What about subsequent to that?

A That water - the land came into the possession of the San Antonio Water Company, and in 1899 or 1900,- I can't say

which it is without hunting up some records, the San Antonio Water Company deepened the well, and pumped something like 100 inches of water out of it.

Q And how long did they continue to pump that amount, or an amount substantially that, How long did they pump and take water from there?

A Down to the present time.

Q What other waters has the San Antonio Water Company ever taken from that section, in addition to the ones already mentioned?

A They sunk a series of wells both east and west of that particular well, and have been taking water from I think all of those wells.

Q And were there any other sources from which they took water

A Well there was the Haskell well, which was still further east, two wells,- two Haskell wells.

Q When was the connection of the San Antonio Water Company first begun with the Haskell wells?

A In 1899.

Q Will you just state what was the history of the connection of the San Antonio Water Company with those wells?

A They bought twenty acres from Haskell. There was a shaft on the property at that time, about 60 or 70 feet deep, and they pumped about 15 inches of water, and during the sinking of that shaft down to 90 or 100 feet, the flow increased to about 20 inches. In the Fall of 1899 they drilled from the bottom of that shaft down several hundred feet, installed a pump, and either that Fall, 1899, or very early in 1900, they pumped about 150 inches of water from that particular well.

There was another well a little east of the Haskell well, perhaps a couple of hundred feet, that was put down in 1900, and after it was completed they pumped something like 70 to 100 inches out of that well also.

Q That was what was known as the second Haskell well?

A Yes, sir; the second Haskell well; it was not really on the Haskell property; it was on a property that we bought afterwards from a man named Kelly.

Q There was also the Rubio well: Or did that pass directly to the San Antonio Water Company? What was the history of that

A That Rubio property came into the possession of the San Antonio Water Company sometime about in 1899 or 1900. I can't remember the date.

Q What was the history of that?

A I can't give you the history of that well; I can't call to mind just what did happen; I know that we pumped some water out of that well; but the quantity or the exact time I can't state.

Q What amount of money was expended by the San Antonio Water Company, in the purchase from the Cucamonga Fruit Land Company, and H. W. Stowell?

A It was $150,000.

Mr. Stephens: We make the same objection to that as we did the other.

The Court: Overruled.

Mr. Stephens: Exception.

Q What was done in the way of constructing a pipe line there in the way of public roads or otherwise?

A At what locality?

Q The pipe line which you have referred to as being constructed by the Cucamonga Fruit Land Company or Stowell for the delivery of that water?

A It is a short distance north of the diagonal road, running from Upland to Cucamonga.

Q State whether it was in sight of it or not, whether it was in sight of that road, the work that was done there?

A Oh yes, it was in plain sight; it was only a few hundred feet, perhaps two or three hundred feet.

Q State whether the sale of this water to Ontario, or rather to the San Antonio Water Company, was a matter that attracted public attention at that time?

Mr. Britt: Objected to as calling for the conclusion of the witness and immaterial.

Mr. Mc.Kinley: I withdraw the question.

Q State whether there was any notoriety given to the sale of that water, by reason of any occurrences at that time and subsequently.

Mr. Britt: The same objection; calling for the opinion and conclusion of the witness; and also that it is irrelevant, incompetent and hearsay.

The Court: Objection sustained.

Q What if anything occurred, with reference to the sale of this water by the Cucamonga Fruit Land Company being publicly attacked?

Mr. Britt: To which we make the same objection.

The Court: The objection is sustained.

Mr. Mc.Kinley: I will consider further what I will do tomorrow in trying to show these matters.

Q With reference to the wells that you have referred to on 16th Street, what amount of water was expended by theSan Antonio Water Company in those developments.

Mr. Britt: That is a matter that the witness ought to have exact information about ; I should think his books of account ought to show.

Mr. McKinley, Q Have you books that would show that?

A We can show it from the books.

Q Well, I will leave that; you haven't those books here?

A No, sir; I have not.

Q Weil, we will send for those, and for that reason also I will pass the question as to the other wells.

The wells were put down with drilling rigs, and a plant, that showed on the surface of the ground were they?

A Yes, sir.

Q How large a plant was there, and what was there? Just generally; I don't care for it specifically?

A Steam boilers and engines, and houses to cover them up.

Q Are they in such a place as to be thoroughly exposed to the public gaze?

A They can be all seen from the Base Line Street.

Q During the period that you were connected with the San Antonio Water Company, in what business was it engaged? Describe fully its operations, as far as the carrying on of its business is concerned? In other words, how the water was distributed, and what waters were distributed, whether for irrigation only, and whether for domestic use and irrigation and so on?

A The San Antonio Water Company is a mutual company, gets its revenue from assessments; the water is delivered into

its revenue from assessments; the water is distributed into the pipes and distributed to the stockholders, in proportion to their holdings of stock.

Q And water for what purposes?

A For irrigation and domestic purposes.

Q Was it so during all of this period that you were secretary, that it was carrying on the business in that way?

A Yes, sir.

Q How was the water disposed of for domestic purposes? Was it sold to the stockholders, or was that covered by their holding and ownership of stock?

A That was covered by their ownership of stock; they took their domestic water that they needed.

Q How did they get it from the company? How was it received?

A They usually ran small pipes from the turn-outs or overflow boxes, from the corner of the lot down to their house.

Q Is that still the manner in which it is done?

A The system is the same. That is for the farmers outside of the incorporated cities.

Q Well, within the incorporated cities of Upland and Ontario is the San Antonio Water Company supplying water for domestic use either directly or indirectly?

A The City of Ontario, that is the old City, owns shares of stock in the San Antonio Water Company, and the water that is appurtenant to that stock is delivered to the city officials, and they make the distribution themselves.

Q To the people of Ontario?

A To the people of Ontario, yes.

Q How large a number of people are dependent upon that supply

the revenue from municipalities, the water is distributed into the pipes and distributed to the municipalities in proportion to their holdings of shares.

Q. And water for what purposes?

A. For irrigation and domestic purposes.

Q. Now in an article II of this special that you were asked, that is was carrying on the business in that way?

A. Yes, sir.

Q. How was the water company of the Kamaiko company? Was it sold to the municipalities, or was that vested by their holdings and ownership of shares?

A. Each was owned by their ownership of stock; they took their ownership when they bought.

Q. How did they get it from the company? How was it received?

A. They usually ran small pipes from his here-and-there or wherever there, from the course of the lakes to their farms.

Q. In that still be manner in which it is done?

A. The system is the same. That is for the common benefit of the incorporated cities.

Q. Well, within the incorporate cities of Tulare and Dinuba is the Kaweah Water Company supplying water for domestic use either directly or indirectly?

A. The City of Tulare, that is the old City, some shares of stock in the Kaweah Water Company, and the water that is apportioned to that place is delivered to the city officials, and they make the distribution themselves.

Q. To the people of Tulare?

A. To the people of Tulare, yes.

Q. Now there a number of people are dependent upon that supply

A Oh, two or three thousand.

Q Since the time when you first became secretary of the San Antonio Water Company has the demand for water for domestic and irrigation uses by the persons dependent,- holding stock in and dependent on the San Antonio Water Company, increased or otherwise?

A It has increased very much.

Q When you said two or three thousand persons you meant those who receive their water from the City of Ontario, after it has been delivered to it, did you?

A Yes, sir.

Q And then are there other persons dependent upon the San Antonio Water Company who hold stock, or who get it from stockholders and dependent upon them?

A There are others; the ranch owners are dependent upon the San Antonio Water Company, but since the Ontario Power Company went into business, the Ontario Power Company is furnishing water to the ranchers outside of the cities.

Q How is it as to the City of Upland? Upon what does it depend for its domestic supply?

A There is an incorporated company there that owns stock of the San Antonio Water Company, and the distribution of the domestic water is made by that company to the citizens of ~~Upland~~ Upland; that is to those who are right in the business and residence part of the city.

Q About what is the population of Upland?

A Oh, it must be over a thousand.

Q What was the condition of the water supply of the San Antonio Water Company, as to sufficiency for its stockholders,

for irrigation and domestic purposes in 1899, when it made this agreement with the Cucamonga Fruit Land Company.

Mr. Haskell: We object to that as calling for the conclusion of the witness.

Q I will ask the witness to state the facts with reference to the water-supply, and the necessities of the Water Company at that time. Do you understand the question? It is to state fully the conditions that existed as to the amount of water you had, and the necessities for irrigation for more water, if it was necessary for irrigation and domestic purposes, in 1899, at the time this purchase was made?

A Well, the stock of the San Antonio Water Company originally is supposed to carry at least one inch of water to every ten shares.

Q What was the number of shares outstanding at that time?

A About 6064; and about that time the company was delivering to its stockholders a head of water consisting of 20 inches, or about 20 inches, for only 12 hours, and with the period between the irrigations running from 40 to 50 days. The full amount of water that the stock should carry on that same basis would be a head of water consisting of 60 inches every thirty days, for 24 hours. That would make the amount of water that the stockholder actually received about one-fifth or one-fourth of what he should have, on the basis of one inch to ten shares. The stockholders were in very serious straits for water. We were scouring the country in all directions to purchase and rent water.

Q When you speak of the amount that was being furnished, were you furnishing to the stockholders of the company all

the water that the San Antonio Water Company owned at that time, and was able to obtain without additional purchases?

A Indeed we were; everything.

Q Will you describe upon the map here what territory the stock of the San Antonio Wter Company covered, referring to Exhibit D?

A It covered that whole territory from the mouth of San Antonio Canyon, down to the Chino Ranch line.

Q That is all of the territory marked in green?

A Green or blue.

Q All of that territory?

A There may be 50 or 60 acres in section 35 that it does not cover.

Q Do you know about what the acreage was that it covered?

A About five thousand acres.

Q And for what purposes was that land being used?

A For growing fruits, oranges and lemons, and a little deciduous fruit, some grapes.

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Here the Court takes a recess until tomorrow, Mar. 4, 1909, at ten o'clock a.m.

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J.W.McKINLEY.

IN THE

Superior Court

OF THE

County of San Bernardino

State of California

Cucamonga Vineyard Company, et al., Plaintiffs	Vol. 23.
vs.	Thursday, March 4, 1909
San Antonio Water Company, et al., Defendants	

INDEX.

I. BENJAMIN, Official Reporter

Thursday, March 4th, 1909. Twenty-third Day.

Mr. McKinley: We desire to offer in evidence the judgment roll in the case of J. D. McPherson et al, against Cucamonga Fruit and Land Company, et al, No. 7729.

Mr. Jolliffe: We offer in evidence a deed dated July 30, 1892, recorded in Book 158 of Deeds, at page 184, from S. G. Haskell to J. H. Sourwine.

A deed dated July 15, 1892, recorded in Book 158, at page 171, from J. P. Haskell to S. G. Haskell, conveying certain water rights appurtenant to lands on which the well of the Upland Water Company is situated.

A deed dated May 31, 1887, recorded in Book 136 of Deeds, page 177, from Charles Charnot to S. G. Haskell, conveying Lot 7, Block 16, of the Cucamonga Homestead Association.

A deed dated May 3rd, 1886, recorded in Book 58 of Deeds page 321, from the Cucamonga Homestead Association to Charles Charnot, conveying Lot 7, Block 16, Cucamonga Homestead Association.

A deed dated July 3rd, 1874, recorded in Book P of Deeds, page 386, from I. W. and I. M. Hellman to the Cucamonga Homestead Association, conveying all lands or water rights in controversy, of Upland Water Company, J. J. Atwood and the San A ntonio W ater Company.

A map of the Cucamonga Homestead Association, appearing of Record in Book 6 of Maps, at page 46.

Mr. Britt: We fail to see the pertinence or relevancy of the judgment roll in the McPherson case. None of the plaintiffs here are parties to that action of McPherson against the Cucamonga Fruit and Land Company.

The Court: You say none of the parties were parties to that action?

Mr. Britt: None of the plaintiffs were parties to that action.

The Court: Wasn't the Cucamonga Land and Irrigation Company a party to the former action?

Mr. Britt: It is barely possible that some of these Old Settlers were.

Mr. Haskell: None of the parties whom I represent were parties.

Mr. McKinley: I think that none of the plaintiffs were parties.

Mr. Britt: The Old Settlers Water Company was certainly not a party.

The Court: It would seem as though if none of the adverse parties in this suit were parties to the other suit, and there is no privity between them, the objection would be good.

Mr. McKinley: If for no other purpose, it is admissible as establishing the title between the Cucamonga Company and the Cucamonga Fruit and Land Company, and this defendant ~~and this defendant~~, as a muniment of our title and

as part of our chain of title. I am simply insisting that it is competent for that purpose, and, if it is competent for any purpose, it is admissible.

Mr. Britt: I will make these objections: That as regards the Cucamonga Vineyard Company and the Cucamonga Land and Irrigation Company, plaintiffs here, the judgment roll, and the judgment itself, now offered in evidence, are irrelevant, immaterial and hearsay. They are not competent to affect any interest of either of the plaintiffs that I have mentioned, -- those represented by Mr. Stephens and myself -- for the reason, among others, that neither of these plaintiffs was a party to that action, and it does not appear that either of those two plaintiffs named, or those with whom they are in privity, were in any way bound or affected by the judgment. I am not advised whether or not the intervenors, or any of them, were parties to that suit or affected by it, and I am not advised whether Mr. Waters deems that the judgment roll is competent to affect any interests of the Old Settlers Water Company. I make the objections merely for the two plaintiffs appearing here, particularly by Mr. Stephens and myself.

Mr. Haskell: We make the same objections, for the same reasons, on the part of the intervenors. None of the intervenors were parties to that action.

Mr. Waters: The plaintiff, Old Settlers Water Company, objects to the judgment roll offered, upon the grounds of objection stated by Mr. Britt as to the other plaintiffs, and we especially object upon the ground that this plaintiff

was neither party or privy to the action, the judgment roll of which is offered, and we object to it generally on the ground that it is irrelevant, immaterial and incompetent.

The Court: Mr. McKinley, you made some suggestion that it was offered as a muniment of title. I am not strictly advised at present what the nature of the judgment was.

Mr. McKinley: It was determining the right of the Cucamonga Water Company and the Cucamonga Fruit and Land Company and N. W. Stowell and the San Antonio Water Company, and all of the parties here. I think that probably Mr. Kincaid was a predecessor in interest of the Old Settlers Company, was he not, Mr. Waters?

A As to some things he may be.

Mr. McKinley: At any rate, the judgment determines the rights between these parties as to these waters, and I take it then, it gives to us whatever right they may otherwise have had -- the Cucamonga Fruit Land Company and the Cucamonga Water Company, in the particular waters involved in this action, which are the waters of the wells, or the waters described in the contract introduced between the Cucamonga Fruit Land Company and Stowell and the San Antonio Company. The claim was, that the Cucamonga Company had an interest despite those contracts, and this judgment determines that they did not.

Mr. Britt: There is no cross-litigation here between the Cucamonga Water Company and the San Antonio Water Company.

Mr. McKinley: We would be entitled to introduce a deed from the Cucamonga Water Company to the San Antonio Water

Company, of a part of the waters involved in this litigation, and when we have a decree adjudging that they are not entitled to it, it has the same effect as a deed, and is therefore a muniment of title.

Mr. Britt: I do not see how it could, any more than a deed from the Cucamonga Water Company would be evidence without connecting it in some way with the plaintiffs in the case.

The Court: I do not that necessarily follows. This is in the nature of an action to quiet title, and in an action of this character the Court can determine all the rights of the defendants that are adverse. In other words, the true test would be whether or not the Cucamonga Water Company was a party, and the San Antonio Water Company offers this judgment roll as against it. Anything that dtermines the rights between those two companies, is admissible, and that is an end of the controversy here presented, but it may not have any effect to bind the plaintiffs.

Mr. Britt: The San Antonio Water Company is not seeking to quiet any title against the Cucamonga Water Company. There was a cross-complaint filed, but it was dismissed.

Mr. McKinley: I thought a number of these defendants were kept in the action because you did have an action to quiet the title.

Mr. Britt: The ground suggested here why the judgment roll should be admitted is, that it determines something between the Cucamonga Water Company and the San Antonio Water Company, and they are not here contending.

Company; at a profit of the [illegible] [illegible] [illegible] [illegible]-tion, and that he [illegible] a [illegible] [illegible] than the [illegible] [illegible] it, [illegible] [illegible] [illegible] as a land, and is therefore a contract of title.

Mr. Smith: I do not see how it [illegible] [illegible] [illegible] [illegible] from the [illegible] [illegible] Company [illegible] to [illegible] without [illegible] it is in a way [illegible] with the [illegible] [illegible].

The Court: I do not see that necessarily follows. This is in the nature of an action to quiet title, and in an action of this character the court can determine all the rights of the defendants that are involved. In other words, the true test would be whether or not the [illegible] [illegible] Company was a party, and [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] will be [illegible] [illegible]. [illegible] [illegible] the [illegible] [illegible] [illegible] [illegible] [illegible], [illegible] [illegible] [illegible], and [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible], [illegible] it [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] the [illegible] [illegible].

Mr. Smith: The [illegible] [illegible] [illegible] Company is [illegible] [illegible] to quiet any title against the [illegible] [illegible] Company. There was a [illegible] [illegible], but it was [illegible].

Mr. [illegible]: I [illegible] a [illegible] of [illegible] [illegible] very [illegible] [illegible] [illegible] [illegible] you [illegible] [illegible] to quiet the title.

Mr. Smith: The [illegible] [illegible] [illegible] [illegible] the [illegible] will [illegible] be [illegible] in, [illegible] [illegible] [illegible] [illegible] [illegible] the [illegible] [illegible] Company and [illegible] the [illegible] other Company, [illegible] [illegible] [illegible] [illegible] [illegible].

Mr. McKinley: It would not make any difference even if the Cucamonga Water Company was not a party to this action. In order to set up our affirmative defense, it is necessary to show whatever title we have, whether it be as the result of judgments, or of deeds, or of conveyances, or of agreements, we are entitled to introduce it here for the purpose of showing what our title is.

The Court: That would not give you any title as against parties who were not parties to the other suit.

Mr. McKinley: If we show the title in the other company, and we have to trace our title --

The Court: The question in that other suit, was not one of title primarily, as much as priority was.

Mr. McKinley: It was a question whether we had a right to take those waters as against the Cucamonga Water Company.

The Court: Well, that is a question of priority. The whole theory in that case was, on the one hand, that it was an underground stream.

Mr. McKinley: The theory of the case was, that the Cucamonga Fruit Land Company and Stowell had conveyed waters which belonged to the Cucamonga Company, and that they were entitled to them, and that there was no right to take the water away from the Cucamonga Water Company.

The Court: But that contention was predicated on the theory that they were conveying away waters of the stream that belonged to other parties by prior appropriation.

Mr. McKinley: Not by prior appropriation, but by grants.

The Court: I guess that is true. It is all so hazy in

my mind that I have really forgotten.

Mr. McKinley: The theory of plaintiffs in that case was that there was an underground stream, and that these waters were a part of the underground stream. We seek to show that as against the Cucamonga Water Company we have a judgment.

The Court: I confess that I am very much at sea, and I think the matter had better be held in abeyance. It may be that counsel may desire to investigate it farther. I will confess that I am very hazy in my recollection of it.

Mr. McKinley: Very well. We are willing. I understand that we will be heard farther on the matter.

The Court: Yes. I will give you an opportunity later.

Mr. McKinley: We will withdraw this offer, and bring it up again.

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B. C. SHEPHERD.

(Direct examination resumed)

Mr. McKinley: Q At the time we adjourned we were discussing the purposes for which the land, or for which the stock of the San Antonio Water Company was being used. With regard to the land planted in fruits, organes and lemons, has the amount of planting been increased since 1898?

A There has been some increase.

Q How is it as to population and improvements in that territory?

A There is a large addition to the population, and a great many improvements.

Q Has the necessity for water been increasing or decreasing, as to the amount necessary during that period?

Mr. Waters: The plaintiff, the Old Settlers Water Company, objects to this evidence upon the ground that the increase of the population can neither increase an appropriation, nor prescriptive use, or any other right to water, and that it is irrelevant, immaterial and incompetent.

Mr. Britt: We join in the objection.

The Court: What is the purpose?

Mr. McKinley: The purpose is to show the necessity for the beneficial use made of the water, and the purpose for which it has been used, following out the line of cases holding that it is taken into consideration by the court, especially in an equitable proceeding where an injunction is being sought, and that the matter is to be considered

by the court whether the remedy should be by injunction or by damages, for the purpose of showing the beneficial use of the waters, just as plaintiff undertook by its evidence to show the necessities of their land.

The Court: Is it in support of estoppel?

Mr. McKinley: In support of estoppel.

The Court: I am somewhat in the dark as to these pleadings.

Mr. McKinley: These matters are very fully pleaded.

Mr. Britt: I think it ought to be objected farther, to this question, that it is calling for the opinion and conclusion of the witness.

The Court: The objection is sustained on that ground. Defendant excepts.

Q What change has there been in the conditions there, with reference to irrigation, Mr. Shepherd, since 1898?

A There has been a large increase in the necessities. Perhaps I do not quite catch what your question implies.

Q Well, in what way? Counsel objects to our getting a conclusion from you as to necessities, but in what way has there been an increased demand. State the fact. I don't want your conclusion.

A The facts are, that there has been an increase of acreage of fruits that needed water -- fruit trees that needed water -- the trees that were already there constantly growing, and needing an additional amount of water with the increase in the age of the trees. There being an increase in the population, it needs more water to supply the citizens for domestic purposes.

Q During the period that you have resided in Ontario, you have been familiar with the raising of citrus fruits, and the use of water for citrus fruits?

A I have.

Q State whether in your opinion the necessity for more water increases with the age of citrus trees?

A The increased age of citrus trees increases the need for water very largely.

Q As these additional waters, concerning which you have testified, were procured, what has been the condition with reference to the amount of water furnished for irrigation and domestic purposes, as to its sufficiency? I am not calling for your opinion, but to state as to the amount delivered, and the facts with reference to the amount that has been delivered from time to time.

Mr. Britt: Just a moment. So far as the increase of water supply by the company is concerned, we suppose that that has occurred. We charge the defendantx here with having taken water to which it is not entitled. But the extent of the increased supply by the company is susceptible of accurate ascertainment. The company has made a record of the water delivered, and we object to the question to the extent that it seeks to obtain an expression of opinion here from the witness on the quantity of water delivered by the defendant or defendants, for the reason that it is not the best evidence. The mere opinion as to the quantity delivered, until it has been shown that no better evidence exists, ought not to be received. I will agree that the estimates are frequently received from the

necessities of a case, where it is shown that no better evidence exists; but in the present case, the witness has testified to the receipt of a definite quantity of water from definite sources, and no doubt the water has been disbursed and distributed by the companies with equal certainty. And still, under some circumstances, the objection that an opinion is called for, might not be sustained; under the circumstances which might be assumed to exist here till the contrary is shown, I think the objection does lie.

Mr. McKinley: I do not understand my question to call for an opinion.

(The question is read).

Mr. Britt: May I interject a question here?

The Court: Yes.

Mr. Britt: Q Has not your company kept a record of the quantity of water delivered by it from year to year?

A Yes, there have been records kept.

The Court: Do you know anything about the actual amount of water received or distributed except by the reports filed in your office while you were secretary?

A From my general knowledge from talking to the zanjero and conversing with the irrigators who constantly come into the office in large numbers.

Q Exactly; what somebody else has told you?

A That is it.

Mr. McKinley: I will not press the question farther.

The Court: It does seem to me that there are certain matters so clearly within the knowledge of all of us -- I

am not speaking of my knowledge as a court -- but, for instance, that the colony of Ontario has grown in population; that the acreage has increased; that it is a steady growing section, which requires water, and that the trees require more water as they get older. It seems to be a waste of time to go into those things, and it seems to me that a stipulation ought to be made. I do not care to impose on counsel, but it is a time-saving proposition.

Mr. McKinley: I do not want to waste much time on it, but we wanted to make some kind of a record.

Mr. Britt: We will admit that citrus orchards as they grow older, up to 12 years, require more water. After they attain that age, the demand is more constant.

The Court: Is there any controversy that citrus orchards in the colony of Ontario require water for irrigation?

Mr. Britt: None.

The Court: Is there any controversy that the population in that community has increased in the last few years?

Mr. Britt: None.

The Court: Is there any controversy that there has been an increase in acreage of citrus groves?

Mr. Britt: We do not know about that. Our impression is that there has been very little increase of the citrus groves.

The Court: Then that seems to be about all there is in dispute about that phase of the case.

Mr. McKinley: Yes; I am glad your Honor has simplified the matter.

Q Mr. Shepherd, you were asked to produce the books showing your accounts with reference to the matter of ex-

penditures incurred by the San Antonio Water Company in the purchase of and the making of the various developments to which you have testified. Have you the books with you, from which you have testified?

A I have. I haven't brought the regular ledger accounts, but I have brought the minute-book which shows the annual statement; part of the records which shows the amount that has been expended on these different developments.

Q State the amount that has been expended on the different developments, and if you can, separate it, and give the amount before the commencement of the action on March 1st, 1904.

Mr. Britt: Give us the dates, if you can, of the expenditures.

A It would save very much time if I could go over these books. That is, if I have got to get the amounts at the different times and tabulate it, and refer to them very quickly, instead of hunting up all the data right here now.

Mr. Britt: I think that would be better.

Mr. Waters: The law has been changed so that that can be done -- to make a summary of voluminous accounts. We have done it in other cases like this, and found it very expeditious.

Mr. McKinley: Then with that understanding, covering that matter, will complete my examination of Mr. Shepherd. If you will,also include in that, Mr. Shepherd, the statement showing the bonded indebtedness that the company has incurred. Oh, there is another matter that I want to ask

about also. Mr. Shepherd, are you familiar with the way in which the business of the Ontario Power Company has been carried on in its relations to the San Antonio Water Company?

A I am.

Q When did there first begin to exist any relationship between the San Antonio Water Company and the Ontario Power Company?

A In 1902.

Q Will you give the history of that relationship, not of course, stating the contents of written agreements -- what the Ontario Power Company was doing previous to that, what business they were carrying on, and then what relationship arose between them in the history of the two companies in the carrying on of business.

A Previous to the time that the capital stock of the Ontario Power Company came into the possession of the San Antonio Water Company, I don't know very much about how they conducted their business; but from that time on-- from the time it came into the possession of the San Antonio Water Company, I am familiar.

Q What business was the Ontario Power Company carrying on?

A It was developing water very largely. That is, I think, that seemed to be their principal business, as far as I know.

Q Where were they developing water?

A On the west side of the Red Hill at Cucamonga.

Q And were they carrying on any business with that water,

or doing anything with it? What were they doing with the water that they developed?

A I don't know.

Q I don't mean specifically, but generally; were they making any use of it, other than for the purposes of irrigation, or purporting to?

A They were using some water for domestic purposes, but I don't know as they were using any for irrigating purposes.

Q Proceed with what has been done since that in the way of carrying on business -- what that company has done. That is, what business has the Ontario Power Company carried on?

A Since it came into the possession of the San Antonio Water Company they have been carrying on the business of furnishing water for irrigation and for domestic purposes, and generating electric power, and selling electricity for light and power purposes.

Q How was that business carried on, as to whether it was carried on with the business of the San Antonio Water Company, or carried on separately?

A It was carried on separately.

Q Were the officers of the company the same?

A The business was done in the same office.

Q Were the officers the same?

A Not the same officers.

Q In 1902, were the books of the two companies kept together or separately?

A They were kept separately.

Q Were you an officer of the Ontario Power Company at any time?

A I was.

Q How long were you an officer of it?

A I have been an officer ever since it came into the possession of the San Antonio Water Company up to the present time.

Q Are you still an officer?

A Still a director of the company.

Q Were you secretary of the Ontario Power Company at any time?

A I was secretary; yes, sir.

Q How long were you secretary?

A Up to about two years ago.

Q And during that time were you secretary of the San Antonio Water Company also?

A I was.

Q Did you perform your duties for each company entirely separately?

A Entirely separately.

Q Who was president of the San Antonio Water Company during that time?

A Mr. W. T. Keeke.

Q Who was president of the Ontario Power Company?

A Mr. L. S. Dyar.

Q Were the directors of the two companies the same?

A They were not.

Q Were the bookkeepers and other employees the same -- of the two companies -- during the time you were there?

A The bookkeeping was done by the same parties. There

There were other employees, of course, that didn't work for both companies.

Q Since you ceased to be secretary, do you know how the business has been carried on? You are a director still?

A Still a director.

Q Who has been secretary of the Ontario Power Company since you ceased to be secretary?

A Mr. J. H. Hartley was secretary for a time. Mr. J.O. Mills is the secretary at the present time.

Q Has thebusiness of the companies been carried on in the same way since you went out as secretary as before?

A It has.

Q That is, separately?

A Absolutely separately.

Cross-Examination.

Mr. Britt: Q Mr. Shepherd, who has possession of the stock books of the Ontario Power Company -- the actual custody of them? Mr. Mills or yourself?

A I am slightly deaf, Mr. Britt. I have missed one word.

Q Who have hadthe actual custody of the stock books of the San Antonio Water Company and the Ontario Power Company?

A They are in the possession of the secretary, Mr. Mills.

Q Has he the possession of the atock books of both companies?

A He has.

Q His office is kept where?

A At Ontario.

Q With whom? You?

A The office of the San Antonio Water Company and the office of the Ontario Power Company are in the same building.

Q Are they in the sa e room?

A There are several rooms there . They occupy the same rooms, and do business in the same ~~rooms~~ rooms.

Q Mr. Mills occupies those rooms with you? You and he occupied the rooms together?

A I am only there occasionally as a director, when they have a meeting of the board of directors.

Q I understood you to say you are secretary?

A Not now. Mr. Mills is the secretary now. I am a director.

Q I thought uou were still secretary of the San Antonio Water Company?

A No, I am not.

Q You were secretary of noth companies till two years ago?

A Yes, sir.

Q And then some one else held the office for a time -- Hartley, you say, his name was?

A J. N. Hartley.

Q And at present Mr.Mills is secretary of both companies?

A Yes, sir.

Q And he has the custody of the books of both companies

A Yes , sir.

Q You are a director in both companies?

Q. Yes, sir.

A. Do little or the ice harvest never happen on the waters of the Ontario Ice Company are I. Co. New York?

Q. Are they I. Co. are Ice?

A. There are several ice cutters. The Company has some men, and it depends on the ice which cutter.

Q. Do. Little Neighbor Ice Company, and Do you be employed the same Company?

A. I am only cutter exclusively at a cutter, also my there's cutter of the cutter of Company.

Q. I understand you to say you are employed

A. Yes sir. Q. With is the employer now. I am a cutter.

Q. I mean, do you with Company or is the Ontario Ice Company?

A. Yes, I do.

Q. The ice harvest of the Ontario Ice Co. was there last?

A. Yes, sir.

Q. And this was the ice that was sold to Allen Co. a plus -- Darling, was not, it was ice?

A. I. Darling.

Q. Was it taken within a mile of the Company?

A. Yes, sir.

Q. Was it taken within a mile of the Company?

A. Yes, sir.

Q. Do you a company of ice?

A. Yes, sir.

A I am a director of the Ontario Power Company only. Not of the San Antonio Water Company.

Q Have you ever been a director of the San Antonio Water Company?

A I have not.

Q The two companies have the same general manager, have they not -- Mr. Leeke?

A They have.

Q Always have had since the majority of the stock, or all the stock of the Ontario Power Company was taken over by the San Antonio Water Company?

A Mr Leeke managed both companies.

Q He managed the operation of both companies?

A Yes, sir.

Q Can you produce the minutes of those two companies?

A I can. They are not here at the present. There is only a portion of them here at present. None of the minutes of the Ontario Power Company are here.

Q You referred to the time when the stock of the Ontario Power Company was taken over or acquired by the San Antonio Water Company. What was that date? I suppose your books will show definitely, but as you have undertaken to say here that it occurred, I believe in 1902, can you give the date exactly?

A It was in May. About May the 8th or 9th of May, 1902.

Q Do the transfers of the stock appear in the stock-book of the Ontario Power Company?

A They do.

Q Will you produce those books -- the stock books of

A. I am a director of the Atlantic Power Company only, not at the Gulf Power Company.

Q. Have you ever been a director of the Gulf Power Company?

A. I have not.

Q. Can you describe your relationship with Mr. Joe Jones?

A. Joe Jones.

Q. Mighty nationally known for medicine of his own, is he not, the owner of the Atlantic Power Company and owns stock by the Gulf Power Company?

A. Mr. Jones owns some stock.

Q. Do you know the amount of his ownership?

A. I am.

Q. Can you produce the minutes of those two companies?

A. I mean. They are not here at the present. There is only a quorum of those here at present. Some of the minutes of the Atlantic Power Company are here.

Q. The minutes of the Atlantic Power Company are required by the Gulf Power Company and should have been kept by the Atlantic Power Company. Shall we have them? I suppose your books will show definitely, are we you have conferred on my form that it presented, I believe in 1960, has you date the date exactly?

A. It was in May. Would say the 4th or 5th of May, 1960.

Q. Is the minutes of the board appear in the minutes of the Atlantic Power Company?

A. They do.

Q. Will you produce those books — the board books of

the Ontario Power Company?

A I can.

Q I will ask you to do so -- Can you do so tomorrow morning?

A Yes, sir.

Q And the book of minutes of the stockholdersand directors, showing the proceedings of the stockholders and directors of the Ontario Power Company. Can you produce those?

A I can.

Q Please do so tomorrow morning. And the book of minutes of the proceedings of the stockholders and directors of the San Antonio Water Company are in court, part of them, at present I understand?

A They are.

Q Will you produce the residue tomorrow morning?

A I will.

Q Now, I understood you to say, Mr. Shepherd, that the Ontario Power Company began at some time the business of furnishing water outside of the cities which had previously been carried on by the San Antonio Water Company. At what time did the Ontario Power Company undertake that part of the distribution?

A I can't give the exact date, but it was shortly after the capital stock of the Ontario Power Company was purchased by the San Antonio Water Company.

Q Was that arrangement between the two companies the result of any contract in writing?

A I think not.

Q How was it arrived at? By any entry in the books of

minutes, or any direction or agreements, or any direction to the officers, or agreement between thecompanies entered up in their books, or was it merely an oral understanding?

A My opinion is that it was just an understanding that the Ontario Power Company was the proper corporation to distribute and sell domestic water, for the reason that, I think, the San Antonio Water Company never made any charge for domestic purposes. I don't think the San Antonio Water Company was elgally entitled to sell water for such purposes.

Q I supposethat that subject of the distribution of water by the two corporations in their respective districts, or spheres, was a matter of discussion among the directors, was it?

A I think it must have been talked over.

Q But you think there was no regular corporate action taken by resolution of the directors entered in their minutes?

A There may have been. As I understand, the result of that arrangement was that the San Antonio Water Company, which had previous to that time been distributing water, both in the cities of Ontario and perhaps Upland, and also to the ranches outside of the cities, it turned over the business of distributing water to the ranches to the Ontario Power Company. The San Antonio Water Company never distributed water for domestic purposes inside of the residence portion or town lots of the city of Ontario, or the city of Uplands. Those corporations owned stock -- at

changes, or any alteration or agreement, or any direction to the villiers, or agreement between the companies [illegible] [illegible] by the [illegible] [illegible], or was it merely an oral understanding?

A. My answer to that is [illegible] just an understanding that the Eastern Power Company and the former corporation or [illegible] and [illegible] [illegible], did [illegible] [illegible] that, I think, the [illegible] [illegible] [illegible] [illegible] made any charge for domestic purposes. I don't think the [illegible] [illegible] [illegible] already [illegible] [illegible] water for such purposes.

Q. I suppose that, as you [illegible] [illegible] [illegible] of water by the [illegible] corporation or their [illegible] districts, or [illegible], was a [illegible] of [illegible] among the directors, was it?

A. I think it must have been about that.

Q. But you have since had no [illegible] [illegible] [illegible] taken by resolution of the directors minuted in their minutes?

A. There may have been. As I understand, the result of that arrangement was that the [illegible] Power Company, [illegible] and previous to that, [illegible] [illegible] distributing water, both in the village of [illegible] and [illegible] [illegible], and also in the [illegible] portion of the village, it became [illegible] the business of distributing water [illegible] [illegible] by the [illegible] Power Company. [illegible] [illegible] Water Company never distributed water for domestic purposes inside of the [illegible] [illegible] portion [illegible] of the city of [illegible], or the city of [illegible]. [illegible] [illegible] [illegible] --- [illegible]

least the Ontario City owned stock -- and the water was delivered to them in a reservoir, and the city took possession at that point, and made the distribution, and collected the rates itself. The San Antonio Water Company had nothing to do with it. In the city of Upland there is a private corporation that owned stock in the San Antonio Water Company. Water was delivered to them in proportion to the stock that they owned, in a reservoir, and they made the distribution in the city of Uplands.

Q What is the name of that corporation?

A I don't know. I cannot call it to mind.

Q Very well, proceed. What about the lands outside of the cities?

A On the ranches outside, they were not within reach of the domestic systems of these towns, the water was distributed by the San Antonio Water Company, and afterwards by the Ontario Power Company, that is for domestic purposes.

Q For irrigation also?

A The San Antonio Water Company for irrigation, but the Ontario Power Company I don't think distributes water for irrigation purposes.

Q Since this arrangement between the two companies, has all the water outside of the cities of Upland and Ontario under the control of either company, been managed for the purposes of distribution by the Ontario Power Company?

A The Ontario Power Company does not distribute the San Antonio Water Company water. It distributes its own water, so that the Ontario Power Company does not manage the distribution of the water of the San Antonio Water Company.

Q I don't seem to make my inquiry quite clear. I understood you to say that the Ontario Power Company undertook the business of distributing water outside of the cities.

A For domestic purposes.

Q For domestic purposes only?

A Only.

Q Does it make no distribution outside of the cities for irrigation?

A No.

Q How long has it been distributing water outside of the cities for domestic purposes.?

A Since 1902; sometime after our company came into the possession of the San Antonio Water Company, but just the date they began that work I don't remember.

Q Now then, does the San Antonio Water Company continue and has it continued since that time in 1902 to distribute water for irrigation outside of the cities of Upland and Ontario?

A Yes.

Q Does it distribute to anyone besides stockholders?

A It does not.

Q Are these people who receive water from the Ontario Power Company outside of the cities stockholders of the San Antonio Water Company.?

A They are; but it may be distributed to some parties that are not stockholders.

Q It is sold to other parties?

A It is sold to other parties.

The Court: Q You mean by these stockholders who have rights in the stock, or sold by the company?

A Sold by the company.

Mr. Britt: Q Would the books and records and the reports which you refer to or referred to a while ago in a question put by the Court, of the zanjeros and other people, show the quantity of water delivered by these two companies respectively?

A I think so.

Q Are those records kept in book form and have they been so kept since 1902,-- the record of water deliveries by the two companies respectively?

A I don't think there is any regular book that shows that.

Q What sort of a book does show it?

A It might be picked out of the records.

Q Do you mean to say that there are no books devoted to a record of water deliveries?

A No.

Q What sort of records are those water deliveries entered in?

A The water that would be sold by the Ontario Power Company would be charged up to consumers in the ledger.

Q And that ledger is at the office of the two companies, is it?

A Yes, sir.

Q I will ask you to kindly produce that later.

A But the water that is delivered by the San Antonio Water Company, being a mutual company, there is no charge for it and no record kept-- no charge made.

Q Now this water for which a charge is made by the Ontario Power Company comes from what source?

A It comes from the property of the company over near the Red Hill and Cucamonga, and it also comes from water that the Ontario Power Company owns in San Antonio Canyon

Q Had those lines of pipe leading from the Red Hills at Cucamonga and from the 16th Street wells been constructed before the acquisition of the stock of the Ontario Power

Company by the San Antonio Water Company?

A The 16th Street Pipe line was laid before the acquisition of the Ontario Power Company. I think the line from the Cucamonga Red Hill was constructed afterwards, while there was a small line from that neighborhood that was run and constructed before that time by Mr. Stowell or some other party that we rented water from.

Q Here is a deed produced in evidence yesterday-- first an agreement between the Cucamonga Fruit Land Company and the San Antonio Water Company, of date April 8, 1899 , and then a deed of about the same time from Stowell and the Cucamonga Fruit Land Company to the San Antonio Water Company. Now in the year 1899 and in 1900 did the San Antonio Water Company construct any pipe lines for the purpose of carrying on the water which is the subject of that agreement of April 8, 1899, and the deed of about the same date?

A I think there was a line constructed both by the San Antonio Water Company and by Mr. Stowell or the Cucamonga Fruit Land Company,

previous to the acquisition of the stock of the Ontario Power Company, and there was also another line in the same vicinity by the Ontario Power Company after that water was obtained in 1902. There are two pipe lines there.

Q Do they run parallel?

A They do.

Q Was the line which the Ontario Power Company constructed constructed after its stock, nearly all of it, was acquired by the San Antonio Water Company?

A One of those lines was constructed afterwards.

Q The Ontario Power Company had no line there previous to that time-- it hadno pipe line previous to the acquisition of its stock by the San Antonio Water Company?

A I think not.

Q What is the relation of those two lines with eachother? Do they run parallel? Are they close together or wide apart? How are they situated on the ground?

A Very close together; one right close to the other.

Q And are they on the same right of way?

A In the same right of way.

Q And they both commence at the measuring box about half a mile west of the mouth of the Eadie tunnel? Do you remember that about 1903 there was a second line constructed from that measuring box over to the mouth of the Eadie tunnel?

A There was a second line constructed there. I can't give the date.

Q Are the diameters of those two pipe lines the same? What is the size of the two pipe lines-- those two parallel pipe lines?

A I think one is 22-inch, and I don't know the size of the other. It is quite a large pipe line.

Q Is it less or greater than 22 inches?

A I think it is greater.

Q Those two lines have their commencement about the mouth of the Eadie tunnel and they run parallel to what point?

A To a pointon the east line of the lands of the Ontario colony.

Q Do they there separate and take different courses?

A They run in one pipe line until that pipe line isinter-

sected by other pipr lines ru ning north and south, and the water is there distributed into the different pipe lines as noted.

Q Those two pipe lines, as I understand, then join at the eastern boundary of the Ontario Colony?

A Yes, sir.

Q And they discharge into a single pipe line?

A Yes.

Q What is the size of that single pipe line?

A I don't know; 18 or 20 inches about.

Q On this map, defendants' exhibit "L", the two parallel pipe lines are shown, are they?

A They are.

Q Extending from a point marked-- State what that notation is where the two pipe lines begin?

A From the Cucamonga "T" weir, no. a, is where that pipe line begins.

Q There are two of them, are there?

A There are two pipe lines there.

Q And this is extending --

A To a sand box at the eastern line of the lands of the Ontario colony.

Q Do you know whose land that sandbox is situated on?

A The Ontario Power Company.

Q Now I notice that one of those pipe lines is marked on this map 30-inch pipe line and the other 22-inch pipe line. That is your recollection of their respective dimensions, is it?

A That is correct I think. I never measured them, but that

is what they are marked here, and there is no doubt but what that is correct.

Q At the sand box on the east line of the Ontario colony I understand that those two pipe lines merge in one?

A That is my understanding.

Q Now from that point where does this single pipe line proceed? Where does it run to?

A It runs west to Euclid Avenue.

Q About how far?

A It must be about a mile. It may run further than that. It intersects the irrigating system of the San Antonio Water Company, that is, its pipe lines that are running north and south-- different pipe lines.

Q That is, between the sand box and Euclid Avenue it intersects several lateral lines?

A Yes, sir.

Q What company controls these lateral lines for the purposes of distribution?

A The San Antonio Water Company.

Q Where do the lines begin which the Ontario Power Company uses for distribution? Where do those intersect the single pipe line west from the sand box?

A The Ontario Power Company has some agreement with the San Antonio Water Company to use its pipe lines.

Q Is that agreement in writing?

A My impression is that it is in writing, but I am not sure.

Q Will you ascertain and produce it, if you please, Mr. Shepherd.?

[illegible]

Q. Is the Bond Inn on the east side of the [illegible] avenue?

Indicated [illegible] physical [illegible] to me?

A. Yes, [illegible].

Q. Does that [illegible] write some like simple pipe line [illegible] if you [illegible]?

A. Throw [illegible] in Smith Avenue.

Q. Where was [illegible]?

A. It was in [illegible]. It was the [illegible] line [illegible]. It [illegible] the [illegible] Avenue, that is, the pipe line [illegible] the [illegible] and [illegible] pipe line.

Q. Does [illegible] [illegible] and [illegible] in [illegible] [illegible] [illegible]?

A. Yes, sir.

Q. Did [illegible] [illegible] line for the [illegible] [illegible]?

A. The [illegible].

Q. Where on the line begin [illegible] the [illegible] from [illegible] [illegible] the [illegible] [illegible] [illegible] pipe line [illegible] the [illegible]?

A. The [illegible] [illegible] [illegible] [illegible] the [illegible] [illegible] [illegible] the pipe line.

Q. Is this a [illegible]?

A. My [illegible] [illegible] [illegible] [illegible] [illegible] [illegible].

Q. Will you [illegible] [illegible] [illegible] [illegible] [illegible]?

A I can do that, I think.

Q Then the Ontario Power Company for the purposes of the distribution carried on by it, uses the pipe lines of the San Antonio Water Company?

A Yes, sir.

Q And for the distribution it collects pay or compensation as shown in the books of that company?

A Yes, sir.

Q Which of those parallel pipe lines was first constructed, the 22-inch or the 30-inch?

A The 22-inch.

Q Do you know in what year that was constructed?

A 1899, I think.

Q In what year was the 30-inch pipe line constructed?

A I can't give the year.

The Court: Isn't this all in evidence? I had an idea it was.

Mr. Britt: May be Mr. Leeke testified about it. I do not remember. Wasn't it in 1903?

A I think it is very likely it was in 1903.

Q What was the purpose of constructing the large pipe line or 30-inch line?

A To increase the capacity to carry water.

Q Who paid for the construction of that larger line or 30-inch line?

A The Ontario Power Company, I am quite sure.

Q At that time controlled by the San Antonio Water Company?

A Yes, sir.

Q Has the Ontario Power Company any pipe lines of its own

Q. Did you say that?

A. Yes, sir.

Q. Do you know whether or not the Illinois Central Railroad Company has a station in the town of Tuscola?

A. Yes, sir.

Q. Which is the nearest point from the Illinois Central station, the Illinois Central station to the depot?

A. The depot.

Q. Do you know how long that has been maintained?

A. Long, I think.

Q. How many years do you think that has been maintained?

A. Nearly ever since the depot.

The Court: Don't take all the additional time on that point.

Mr. Brown: My recollection is that it was in 1903, I think, Judge.

A. I think it was 1903.

Q. Does the Illinois Central Railroad Company have a station at Arcola?

A. It does not have a station at Arcola.

Q. Does the Illinois Central Railroad Company have a station at Villa Grove?

A. Yes, sir.

Q. Does the Illinois Central Railroad Company have a station at Lake Land?

A. The Illinois Central Railroad Company has a station there.

Q. At that time, particularly in 1903, the Illinois Central Railroad Company

A. Yes, sir.

Q. Was the Illinois Central Railroad Company the only line in the town

west of the sand box to which your attention was directed on the map exhibit "E"?

A I think not.

Q There is no water distributed east of that sand box, is there, by either company? That is, along the line of those parallel pipes?

A The Ontario Power Company had distributed some on its own property there, but I have got no personal knowledge of it.

Q I understood you to say that in 1898 the San Antonio Water Company received some water from Stowell under a lease: Is that your recollection?

A That is my recollection.

Q Was that a written lease?

A I think it was verbal.

Q 30 inches of water?

A That is about the amount.

The Court: Q Are you not mistaken about that? Wasn't there a written contract, Mr. Shepherd?

A I don't think so.

Q I had the impression there was. I might be mistaken.

A There might have been, but my recollection is that there was a verbal agreement.

Mr. Britt: Q I suppose if it was verbal there is some entry of it appearing in the book of minutes.

A Oh, yes; we can dig up some records that will show the facts.

Q If there was a written lease I will ask you to produce it that if it is discoverable. I understood you to say that

that water was used for several months-- the 20 inches.

A Yes; it began some time in the summer of 1898 and ran several months.

Q Did it run in 1899, after the making of this contract of April 8 of that year?

A It continued to run there, but just what the details of the matter were after the water company made the purchase, I don't remember.

Q The San Antonio Water Company began to receive water under this contract of April 8, 1899, I believe you said, toward the end of that year? Or was it in August of that year? It was August, wasn't it?

A They received a portion of that water immediately, if that answers your question. The Cucamonga Fruit Land Company didn't have the total amount to deliver immediately at the date of that contract. It was developing water and it was turned over just as fast as they developed it

Q The agreement for the purposes of developing or the agreement to carry on the work of developing was done by the Fruit Land Company or by Stowell or by both?

A It was done by the Fruit Land Company. Mr. Stowell seemed to be doing all the work. What the arrangement was between those two I don't know.

Q Concerning the arrangement that your company had with Frankish & Stamm, was that a written contract?

A That is, the arrangement to pump the well that was owned by them?

Q Yes.

A That was a verbal contract.

Q Any minute of it appearing in your books of the San Antonio Water Company?

A I can dig up something there that will show the facts--that we got permission.

Q Did your company pay Frankish & Stamm anything for that permission?

A I think not.

Q Do you know what was the depth of the Frankish & Stamm shaft at that time?

A I do not.

Q Were you ever present personally at any pumping of that Frankish & Stamm shaft?

A I was.

Q At what time? Do you recall?

A I can't recall the exact date. It was pumped in 1896 and pumped again in 1898.

Q Whose machinery was used to pump it?

A At one time it was pumped by the machinery that belonged to the Ontario Land and Improvement Company. That is, Frankish & Stamm. At another time it was pumped by the machinery that belonged to the San Antonio Water Company.

Q Howlong did that pumping last in 1896 of the Frankish & Stamm shaft?

A I don't know, but it was probably through the irrigation season.

Q Do you know how much water was obtained?

A About 30 inches.

Q Will your books or records show how long that arrangement lasted? Do you know that there is anything in your books or minutes ?

A I think it is very doubtful if there is anything on the record that will show the time.

Q In 1898 do you know how long the pumping of the shaft of Frankish & Stamm lasted?

A I do not.

Q Do you know how much water was received at that time when the shaft was pumped?

A About the same amount.

Q At that time (1896) when the water was pumped from the Frankish and Stamm shaft where was it taken to?

A It was taken to the pipe system of the San Antonio Water Company.

Q Had the San Antonio Water Company at that time a pipe line on substantially the same route which is occupied by the pipe line now leading from the 16th Street wells to Ontario?

A It was an entirely different pipe line put in for temporary purposes.

Q Not intended to be permanent?

A Not intended to be permanent.

Q Was that the same pipe line that was used to tranport the water in 1898?

A I could not say as to that.

Q You know what is called the Rubio well? You testified about that.

A Yes, sir.

Q Where is this Frakish & Stamm shaft? You designate it as well no. 3. Is it not well no. 3 according to these maps? You say you don't know how deep that was?

A I don't know the depth of the shaft.

Q When you say these maps, I suppose you refer to this map, plaintiffs' exhibit ~~1~~ 1 and the map Defendants' Exhibit "E"?

A Yes, sir.

Q Were you present when the deepening of that shaft was going forward, Mr. Shepherd-- the deepening of well no. 3?

A I was at the well from time to time while the work was going on.

Q It was going on in 1899 and 1900?

A It was one of those years. My impression was that it would be 1899.

Q What time in the year?

A I don't know.

Q Have you any records which would show?

A I can get some records that will indicate the proper time.

Q Do so, if you please. The expense of deepening-- the payment of the expense would show the time when the work was going forward, would it not?

A I think it would.

Q The Rubio well came into the possession of the San Antonio Water Company about the year 1900, I understood you to say. Is that correct?

A No, I don't think it is quite correct. That is, it didn't come into their possession as a matter of record.

Q I didn't ask you about the matter of record. What time did the San Antonio Water Company receive actual possession of the Rubio well?

A I will probably have to explain the circumstances connected with that, and that is, that the San Antonio Water Company was anxious to get the water rights on that piece of property, but it didn't want the orange orchards-- the surface of the land, and it requested Mr. Leeke, the president of the company, to purchase that land in his own name-- that is, as an individual,-- and to take care of it and dispose of the surface of the land and then deed to the San Antonio Water Company the water rights. The San Antonio Water Company were after the water rights and didn't want the land, and that seemed to be the only way they could get it.

Q Was that arrangement carried out?

A That arrangement was carried out.

Q Then while the title was held by Mr. Leeke and the well was pumped it was by the San Antonio Water Company, was it?

A I am very hazy about the pumping of that well for the San Antonio Water Company It may be quite possible that all that pumping was done for use on the land itself. If the San Antonio Water Company did pump that and distribute any water in its own system, it must have been for a very short time, and it may not have done so at all.

Q You stated yesterday "we pumped some water out of that well" and it was in view of that statement that I was asking that question. And I suppose by "we" you meant the San Antonio Water Company.

A Yes; the San Antonio Water Company did the pumping. That is, it paid for it.

Q Did you personally have anything to do with the direction

of the places where that string of wells north of 10th Street -- the so-called 10th Street wells-- should be bored or drilled?

A The board of Directors gave the instructions and orders in regard to that while I was secretary.

Q Who went on to the ground and determined where the wells should be bored or drilled?

A The board of directors of the San Antonio Water Company, together with myself, and there may have been other parties.

Q What amount of stock of the San Antonio Water Company is owned by the city of Ontario?

A About 200 shares.

Q Out of how many in all?

A 6,000.

Q How long has the city of Ontario owned that quantity of stock?

A They owned 160 shares at the time that the city was incorporated, and since that time at different times they have purchased stock making the amount at the present time about 200 shares.

Q It is more now than it ever has been?

A Yes, sir.

Q What was the date of the last acquisition of stock by the city?

A I don't know what the date was.

Q The city of Upland, I believe, owns no stock in the company?

A No, they do not.

Q What is the total amount of water which the San Antonio

Water Company distributed during the dry or irrigating season last year, do you know, approximately? What was the total amount of water which the San Antonio Water Company distributed during the irrigation season last year?

A In 1898?

Q 1908.

A I don't know.

Q Do you know what it was in the last year when you were secretary, which I believe would be 1906 or '7?

A No; I cannot recall the different amounts in different years.

Q About what quantity of water does the city of Ontario receive upon its 200 shares of stock in the San Antonio Water Company?

A I don't know, but I think it is about 30 inches.

Q If it received 30 inches and it has 1/30 of the stock, then it would seem that the company has possession or control of about 900 inches of water? Is that correct?

A I think that is about correct at the present time.

Q It is a supply from the San Antonio Canyon, I think?

A Yes; and other sources.

Q It has some tunnels and wells, hasn't it?, up in the San Antonio Canyon?

A They have a tunnel up there but no wells.

Q Has it some wells in the San Antonio watershed below the mouth of the San Antonio Canyon?

A It has one well on 21st Street.

Q From what other ~~[illegible]~~ source does the City of Ontario derive water besides this 200 shares of stock of the San Antonio

Water Company?

A It has no other source.

Q The city of Upland, I believe, owns no stock in the San Antonio Water Company?

A No, they do not.

Q There is a private corporation there which is a stockholder in the San Antonio Water Company?

A Yes, sir.

Q How many shares of stock does it hold?

A I don't know how many.

Q Do you know how much water it receives?

A I do not.

Q During the time you were secretary of both companies, the San Antonio Water Company and the Ontario Power Company, did you receive a salary from both?

A I received a salary only from the San Antonio Water Company.

Q You received no compensation from the Ontario Power Company?

A No; not individually.

Q You performed the duty of secretary of that company for the compensation that was paid by the San Antonio Water Company?

A I performed the duties without any pay, and they paid the detail work-- for the book keeper.

Q Mr. Leeke was the general manager of both companies and is yet. Does he receive a salary from both companies?

A I understand that he now receives a salary from both companies. But in the early days he only received a salary

Mr. Hastings?

A. It was on the [illegible].

Q. Was it typical, I mean, [illegible] and in the Ben Franklin Dairy Company?

A. Yes, they do [illegible].

Q. There is a private corporation [illegible] is a subsidiary of the [illegible] Dairy Company?

A. Yes, sir.

Q. Subject [illegible] at [illegible] on it [illegible]?

A. I believe [illegible].

Q. Do you know [illegible] it [illegible]?

A. I do not.

Q. During the last year [illegible] Ben Franklin Dairy Company, [illegible] the Ben Franklin Dairy Company and the Ben Franklin Dairy Company, did you [illegible] a milk [illegible]?

A. I believed a milk [illegible] Ben Franklin Dairy Company.

Q. Was [illegible] a [illegible] from the Ben Franklin Dairy Company?

A. No; not [illegible].

Q. Was [illegible] [illegible] it [illegible] [illegible] the [illegible] Ben Franklin Dairy Company?

A. I believe [illegible] [illegible] the Ben Franklin [illegible].

Q. Do. Have [illegible] [illegible] the [illegible]?

A. Do [illegible] [illegible] a [illegible] from [illegible] [illegible]. [illegible] [illegible] [illegible] [illegible] [illegible]

from the Ontario Power Company. I don't think at that time he had ever been officially appointed manager of the San Antonio Water Company.

Q At what time was he appointed manager of the San Antonio Water Company?

A I couldn't give the date, but I think it was a year or two ago.

Q The minutes will show I suppose?

A The minutes will show that.

Q Since he was appointed how has the matter of his compensation been adjusted between the companies, if any adjustment was made at all?

A I don't know. I am not now in the office.

Q You are still a member of both boards of directors, are you not?

A Yes.

Q Has the matter never been canvassed in the board of directors of either company?

A Not in theOntario Power Company except in a very casual way;-- that he was to receive a salary from the Ontario Power Company. But whether the book keeper has adjusted the matter or how I haven't ~~the slightest~~ any personal knowledge.

Q During the time you were secretary there was a bonded indebtedness of the Ontario Power Company created, was there not?

A No, sir.

Q Has that been created since you ceased to be secretary?

A No, sir.

Q Was it before you were secretary?

A It was before.

Q At what time was it that the San Antonio Water Company guaranteed the payment of the bonds of the Ontario Power Company?

A I don't know that they ever guaranteed them. They assumed the responsibility. The Ontario Power Company pays those bonds and I think the records will give the entire details of that much better than I can tell it to you.

Q What was the purpose of the San Antonio Water Company in acquiring virtually all of the stock of the Ontario Power Company about the year 1902 and assuming its indebtedness?

A The San Antonio Water Company was after water.

Q What water could it acquire control of by obtaining the control of that stock?

A The waters that the Ontario Power Company owned over near the Red Hill.

Q Do you mean the waters that were issuing out of the Eadie tunnel, or was it water of wells that had not been connected with the Eadie tunnel at that time?

A I know there was one well that produced a large amount of water that was not connected with the Eadie tunnel at that time.

Q But was connected afterwards?

A It was afterwards connected.

Q Was that the well no. 14?

A No. 14, as I understand it.

Q The one which is now at the head of the tunnel?

A Yes, sir.

Q At that time have you personally made any examination of

that well no. 14?

A I had gone over there with Mr. Stowell and others to look at the well while they were trying to sell us the property.

Q Was Stowell sinking well no. 14? Was it done under his supervision?

A I think it was

Q At the time you were looking at it to what depth had it been sunk, do you remember?

A No; I do not.

Q Did you witness any pumping of the wells for the purpose of any test at that time?

A No; I didn't see any test pumping. Not any pumping for a test.

Q Did your company have any pumping for a test done?

A I think not.

Q Was the acquisition of that well the principal object in view in making that deal taking over the Ontario Power Company's stock?

A That well was reported to us to contain a very large amount of water, and it was certainly one of the principal objects. Of course, we took everything else that we could get with it.

Q There were some smaller wells in the neighborhood?

A Yes, sir.

Q The matter was, I suppose, a goodeal discussed among the members of the board of directors of the San Antonio Water Company at that time?

A Sure.

Q Was there any discussion among the members of the board of directors of the San Antonio Water Company of the probable effect of the opening up of that well no. 14 on other wells lower down which opened into the tunnel?

Mr. McKinley: Objected to as irrelevant, immaterial and incompetent.

Mr. Britt: It illustrates the object had in view by the San Antonio Water Company in taking over this stock, and it illustrates their understanding of the productivity of that well no. 14. Of course, I can't prognosticate the answer of the witness.

The Court: The objection is overruled. Defendants except.

A Very likely there was some discussions, but on other lines; but what thedetails of those discussions were I cannot remember.

Q That is quite likely. Who participated in the discussion? Mr. Leeke?

A Mr. Leeke was there. It would be the board of directors-- I don't just remember who they were. The books will show.

Q You had an engineer at that time?

A Yes, sir.

Q Did you have a consulting engineer at that time?

A We did.

Q Mr. Trask?

A No; I think it was Mr. Finkle.

Q Did you go over the subject with him?

A We did.

Q While you don't remember the details of that discussion,

what was the substance of it as to the effect of the opening of that large well no. 14 on other wells in the immediate vicinity which opened into the tunnel further south or southerly?

Mr. McKinley: Objected to as irrelevant, immaterial and incompetent and seeking to arrive at an opinion without laying a foundation for it.

The Court: Q Do you remember whether Mr. Finkle made any written report in relation to that matter?

A I think that Mr. Finkle made a report on the general proposition covering the whole ground, but I don't remember that that report referred particularly to this question. In fact, I have tried to find the report and have been unable to find it.

Q Whatever report he made was present in the minds of the board of directors at the time of this discussion?

A Oh, I think so.

The Court: The objection is overruled. Defendants except.

A I think the substance of it was that it would not affect the flow from the other wells. I remember-- and I state that because I remember distinctly discussing the matter with Mr. Stowell, and he made the statement at that time that those wells there didnot seem to have any sympathy the one with the other; that there was water standing in wells within a few feet of the surface there while there were other wells in the very immediate vicinity that were emptying into the tunnel, some 125 feet below, and one did not seem to affect the other. So I think the discussion would be on the lines that the opening up of the well would not affect the other

what was the substance of it so as to the effect of the opening of that large well on the oil wells in the immediate vicinity which opened into the channel fissure which was made early?

Mr. McCarthy: Objected to as irrelevant, immaterial and incompetent and seeking to arrive at an opinion without laying a foundation for it.

The Court: Do you remember whether Mr. Fields made any written report in relation to the matter?

A I think that Mr. Fields made a report on the general oil situation showing the whole channel, but I don't remember that that report referred particularly to this question. In fact, I have looked for that report and have been unable to find it.

Q Whatever report he made was placed in the minutes of the board of directors at the time of this discussion?

A Oh, I think so.

The Court: The objection is overruled. Defendants except.

A I think the substance of it was that it would not affect the flow from the other wells, I remember— and I take that because I remember distinctly discussing the matter with Mr. Howell, maybe made the statement at that time that these wells there already seem to have any connection with the water; that there was water standing in wells within a few feet of the surface there while there were other wells in the very immediate vicinity that were pumping into the tunnel, some 100 feet below, and one didn't seem to affect the other, so I think the discussion would be on the lines that the opening up of the well would not affect the other

wells, because there was no sympathy between them to any extent.

Mr. Haskell: I move to strike out what the witness has stated that Mr. Stowell said, as not responsive to the question and as being hearsay. Mr. Stowell was not one of the directors.

Mr. McKinley: The question called generally for the discussion and counsel gambled on the answer.

The Court: Mr. Stowell's statement will go out.

The Court takes a recess until half past one P. M.

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Afternoon Session, 1:30 p.m.

Cross-examination of B. C. Shepherd resumed.

Mr. Britt: Q Mr. Shepherd, did you bring with you those books of account from which you thought you would be able to give the amounts of expenditures made by the San Antonio Water Company for pipe lines and other water improvements, and the dates, with you here today?

A I have a portion here today, but I understood this forenoon that I was to make a summary of the matter to save time and bring it tomorrow.

Q Yes, very well, with that understanding I will ask you to have the books here, as well as the summary, and we will with the permission of the court, suspend the cross-examination at this time.

Mr. Haskell: Q Has either the San Antonio Water Company or the Ontario Power Company pumped any of the Sisteenth Street wells during any portion of the year 1908?

A I don't know.

Q Is there any way that you can ascertain whether they did or not?

A Well, in 1908, I will take that back, because I was there to see the wells going.

Q Have you any way to tell what the amount pumped there at that time was?

A I have not.

Q Do you know whether any of those wells were pumped in 1907 or not?

A I do not know; I think I was absent from California

in 1907.

Q How many acres of land is irrigated by the San Antonio Water Company under the pipe lines leading from the Eadie tunnel?

A I don't know. That would be a pure guess as far as I am concerned.

Q What proportion of the whole amount of 6,000 acres or 5,000 acres which you have testified are being irrigated?

A I don't know what proportion that would be; another mere guess.

Q How many acres of ground are irrigated under the system leading from the 16th Street wells?

A I do not know that either.

Q At the time that you examined the well No. 14 in the presence of Mr. Stowell, at the time you were negotiating for its purchase by the Ontario Power Company, did you see any water flowing from that well?

A I did.

Q Into what was it flowing?

A My recollection was that it was being pumped and that the water was flowing on the surface of the ground for some distance, and then dropped into a shaft.

Q What kind of power was used to operate that pump?

A Electricity.

Q Was the water flowing in an open channel on the grouud, or was it in some kind of a conduit?

A I think it was right on the open ground.

Q Do you know the quantity of water or approximately

the quantity of water, that was being pumped from that well at that time?

A I only know what Mr. Stowell told me.

Q Well, you had some idea at the time as to the measurement of water, didn't you? You have handled water?

A Oh, I have an idea of the amount of water there was there.

Q About how much?

A About 200 inches.

Q And this pumping was being done as a demonstration to show you what the well could do, wasn't it?

A I couldn't say it was being done as a demonstration, because I believe the well was being pumped right along for their own purposes, and not simply to make a demonstration of the amount of water there was there. That was my understanding of it .

Mr. Britt: We ask that the statement of what the witness understood be stricken out, on the ground that it is a mere inference, not responsive to the question, and incompetent and a conclusion of the witness.

The Court: It seems to me the question calls for a conclusion. The motion is denied.

Mr. Britt: Exception.

Mr. Haskell: Q This examination was made by you and other parties interested before the purchase by the Ontario Power Company, was it not?

A Yes, sir.

Q And that was in the year 1902 or 1903?

A 1902, I believe.

Q Since the purchase by the Ontario Power Company, that well has been cut off at the floor level, or approximately the floor level of the tunnel itself, hasn't it?

A I think so.

Q And it has not been capped at any time up to the present time, has it?

A I don't know.

Re-Direct Examination.

By Mr. McKinley: Q You said this morning in answer to a question by Judge Britt, that you were director of both compabies: Have you ever been a director of the San Antonio Water Company?

A I have not. I never was a director of the San Antonio Water Company, and if I made that statement it was a mistake.

Q Now you were examined with reference to the reasons for the purchase of the Ontario Power Company's stock. Had the San Antonio Water Company any controversies or prospective controversies with the Ontario Power Company in any place other than near the Red Hill there?

A They had.

Q Where was that?

Mr. Britt: Objected to as immaterial and irrelevant.

The Court: Overruled.

Mr. Britt: Exception.

A In San Antonio Canyon.

Q What was in controversy there?

A Both companies claimed certain power rights there. The San Antonio Water Company had appropriated water for

power purposes, and the Ontario Power Company claimed practically the same thing on a portion of the ground, and there was controversy over that.

Q You speak of the water from well No. 14 being turned into a shaft: What if anything was that shaft connected with?

A Connected with the Eadie tunnel.

Q Do you know what became of that water after it passed through the tunnel at that time?

A I do not.

Re-Cross Examination.

By Mr. Haskell: Q I understood you to say on direct examination that at a certain time in 1898 the San Antonio Water Company took 30 inches of water by lease from some one of the 16th street wells: That is correct, isn't it?

A No; I think that that was not taken by any lease from the 16th street wells. I think that that water was water that we were permitted to take by Frankish and Stamm, or from their wells.

Q Now, afterwards, they deepened the same well, didn't they?

A Yes, sir.

Q And purchased the same well, and they pumped 100 inches I understood you to say?

A Yes, sir.

Q And I also understood you to say that from 1900 down to the present time they had continued to pump 100 inches?

A I don't think I said any such thing, and if I did it was a very grave mistake; but I am satisfied that I didn't say so.

Q Well, I so understood you. I just wanted to be corrected if I was mistaken.

Mr. Britt: Q After the acquisition of the stock of the Ontario Power Company by the San Antonio Water Company, did those controversies that the companies had up in the San Antonio Canyon, cease?

A Yes, sir, they ceased by virtue of the purchase of the stock and settlement of all differences.

Q What controversies did the two companies have about water in the neighborhood of the Red Hill? Judge McKinley asked if the two companies had any other controversies, and you said yes they had a controversy about water rights in the San Antonio Canyon: What was the controversy between the two companies at the Red Hill?

A I don't think that there was any particular controversy at that point, except that the Ontario Power Company had made a contract with a man named McConnell, to run a tunnel from that point up to the property owned by the San Antonio Water Company on 16th Street, which would drain all of that territory, and the acquisition of the stock of the Ontario Power Company eliminated that danger and also protected our water rights in that vicinity.

Q From what point was it contemplated to run that tunnel by McConnell?

A From the end of the Eddie tunnel to the south-east

corner of the property that was -- or near the south-east corner of the property that was owned by the San Antonio Water Company.

Q You speak of the end of the Eadie tunnel as it existed at that time?

A Yes, sir.

Q It was not as far north as it is at present?

A No, sir, I believe that it was a continuation of the Eadie tunnel up to that point.

Mr. Haskell: Q In order to clear up this question of what your testimony was, I would like to read it to you from page 1916, line 10: "Q Do you mean that you did not take water from it during the ownership of Frankish of Stamm, or that you didn't take it ever?" "A Previous to that date?" "Q No, subsequent to it." "A Oh, subsequent to it; we have taken lots of water from it since hat time." "Q Well, that is what I want to know about. I want to get the whole history of your getting water from it. You first leased water from it, leased the use of the well and pumped that season. Subsequent to that time did the San Antonio Water Company ever take wastbr from that well?" "A They did." "Q When?" "A 1898." "Q How mich did they take in 1898?" "AAbout the same amount." "Q What about subsequent to that?" "A That water -- the land came into the possession of the San Antonio Water Company, and in 1899 and 1900 -- I can't say which it is without hunting up some records -- the San Antonio Water Company deepened the well and pumped something like 100

inches of water out of it." "Q And how long did they continue to pump that amount, ~~substantially that amount~~ or an amount substantially that? How long did they pump and take water from that?" "A Down to the present time."

Now, as I understand you now, you were mistaken, or misunderstood the question, and that was not the fact?

A No, I didn't misunderstand the question, and I think the answer there is very explicit; that after the well was finished that they did pump 100 inches of water out of it, and afterwards they did pump water out of that well down to this time, but I didn't say the amount. What I mean to say, I didn't say they continued to pump 100 inches.

Q I understand your answer differently from what you intended it then.

A Well, that is the way I intended it.

Q You don't know what amount they continued to pump?

A I don't know the amounts; it was a lesser amount. I don't know what amount.

Q You simply say now they pumped some down to the present time?

A Yes, sir.

By Mr. Britt: Q You said that you had not been a director of the San Antonio Water Company: At what time did you become a director of the Ontario Power Company?

A It was in May, 1902.

Q That was after this stock had been acquired by the

San Antonio Water Company?

A At the same time.

Q And you had previously been the secretary of the San Antonio Water Company?

A Yes, sir.

Q And were at that time?

A Yes, sir.

The Witness: Can I make a correction?

The Court: Certainly.

A This morning I made a statement as to Mr. Finkle making a report, and I think that was understood as a report being made before the purchas4of this stock of the Ontario Power Company, and I find that that was a mistake. That the time that Mr. Finkle made a report was when the Water Company purchased that130 inches of water, and not at the time they purchased the Power Company.

By the Court: Q Wasn't the 130 inches of water purchased before the Power Company deal?

A Yes, sir, the 130 inches of water was purchased in 1899, and the Ontario Power Company's purchase was made in 1902. And the Finkle report was previous to the purchase of the 130 inches of water, and not previous to the purchase of the Ontario Power Company. So that my statement this morning would leade to the fact that it was made before the purchase of the Ontario Power Company and I wish to correct it.

Mr. Britt: Q You say that that report is lost?

A I don't know that it is lost. I was hunting the records in the San Antonio Water Company's office, and I was

unable to find it.

The Court: I understood the witness to say he didn't know whether it was in writing or not, but he didn't beliefe it was: Is that correct?

A Oh, I think it was in writing.

Mr. McKinley: Q Was Mr. Finkle consulted about that purchase at all, the Ontario Power Company?

A I don't think Mr. Finkle was consulted at all at that time.

Q Who was the consulting engineer at that time?

A A Mr. Sanders.

Q The report that you were referring to at that time was a report in reference to the purchase of the Ontario Power Company and that is the one that you meant that you thought was not in writing?

A Yes.

Q The report of Mr. Finkle with regard to the purchase of 130 inches from Stowell, and the Cucamonga Fruit Land Company was in writing, as you remember it?

A That was in writing, I think without doubt.

Mr. Britt: Q Was the Sanders report in writing?

A I don't think Sanders made any report in writing. I am quite sure he did not.

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ROBERT MANLEY.

Robert Manley, a witness called by defendants, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Jolliffe: Q Where do you reside?

A Ontario.

Q Do you have any employment or position with reference to the San Antonio Water Company, or the Ontario Power Company?

A Yes, sir; the San Antonio Water Company.

Q What is that position?

A Superintendent of Construction.

Q I will ask you if you know anything about any water being taken from the San Antonio Canyon or creek over to the Cucamonga Creek, or wash, or that vicinity?

A Yes, sir.

Q Well, state about the extent to which water had been taken over there from the creek or canyon.

Mr. Haskell: We object to that as irrelevant immaterial and incompetent. As we understand the purport of it is to show that flood waters of San Antonio Creek have been delivered and turned into Cucamonga Creek.

Mr. Jolliffe: That is the purpose, and also to show that the basin which supplied the wells and the tunnel is fed by a supply of water which we have put in there from San Antonio Creek when we do not need it for irrigation, and that it is stored there. We shall claim that it is part of the waters which we are taking.

The Court: You claim it was done by artificial means?

Mr. Gregg: Yes, sir.

Mr. Haskell: We objectx to that as incompetent, irrelevant and immaterial. That while there may be some law permitting persons under some conditions to turn water into natural channels, and again take it out, that there is no precedent, and can be no precedent, which says that they can turn flood waters from one flood channel to another flood channel, and have it sink by percolation, and then reclaim it. They must first admit that every plaintiff here is entitled to the full amount of water that he ever claimed or used from the stream, and they are only entitled to such surplus as may be there. They are not entitled to take an inch of water out of that basin.

The Court: I am inclined to think your view is correct. Your complaint is that the defendants are taking water that belongs to you from the Cucamonga spring. Now if they can show that it is water that does not belong to you, they should be permitted to do so.

Mr. Britt: You may put water into the channel of a surface stream and reclaim it. You know there the quantity your put in, and you know the same quantity is taken out, and you can trace it from the place of deposit to the place of reclamation. But it is entirely a different matter when you put water on to the earth and it seeps and percolates into the ground and disappears from sight. That problem, I suppose the courts will not undertake the duty of unravelling and solving. Water turned into the ground, one would think, would belong to the owner of

the soil; at least the use of it there, and that it was entirely lost to the person who makes the deposit. It is not like putting it into a stream where you can see what becomes of it. On a debris cone such as at the mouth of Cucamonga stream, water turned on there cannot be in the nature of things traced. It cannot be known where it goes. At any rate, where it is sunk into the ground out of sight we maintain that it is so far dedicated to the purposes of the individuals to whom it would eventually come in ordinary course of percolation, that there can be no right of reclamation on the part of the person who made the deposit. Then if there is no right of reclamation this testimony is entirely irrelevant and im aterial.

Mr. McKinley: We are willing to stipulate with counsel that where it is underground, where no one can see it, that no one can tell anything about it; but the entire theory of plaintiffs is quite contrary to that. They are going on the theory that water can be traced ~~on the ground~~ underground. As far as this testimony is concerned, it does not go to the extent of reclaiming that water somewhere else. If we can show that ~~the~~ we turned it over there, and are able to do something in the direction of tracing water which plaintiffs rely upon as such an easy thing to do, we will expect to show that by the depositing of the water there we have poured it out on our own ground, and in that case we certainly have the right to take it out. In the next place, it is material for the purpose of showe ing all the changes in the conditions there, as shown by the measurements and so on, and accounting for the dif-

ference of measurements and the products of streams at different places. We say for both reasons the evidence is material and relevant.

Mr. Britt: The plaintiffs join in the objection made by the intervenors.

The Court: I am inclined to think that the evidence is admissible; much that has been said is addressed to the weight rather than the admissibility of the evidence. The difficulty of tracing water underground is ever present in all these water-suits. That is what we have these experts for, to see where ordinary people can't see, and give us the ebenefit of their knowledge and experience. But there is one element suggested in the case that seems to me to make this evidence admissible: as I understand the general theory of the plaintiffs, it is that there was formerly wonted to flow in the Cucamonga stream, and out of the Cucamonga Springs a large quantity of water, which has ceased to flow. The contention of the plaintiffs is that the defendants have taken that water, and for that reason it ceases to flow. I don't know what the case is going to develop, but supposing it should appear that these defendants are turning into that channel or system of channels, such a large body of water, as would more than ofset any claim that you make there it would tend to establish the theory that the water went in some other direction; because if I understand your theory here you practically concede and contend that the original source of all this water supply of Cucamonga Springs and the Red hill, is from the Cucamonga Canyon.

Mr. Britt: We think so.

The Court: Now, it seems to me that there might be a practical demonstration,- if they turned in what ordinarily would supply according to your theory the Cucamonga Springs, and the Cucamonga Stream, or four or five times amount of water, we will say, which has ever been taken away from there, and yet the supply has decreased constantly, it seems to me that some other theory must be looked for to account for that condition. My idea of the matter is to let the evidence in, and thresh out these theories afterwards. The objection is overruled.

Mr. Britt: Exception.

Mr. Haskell: Exception.

It is stipulated that any objection or exception, made and taken, on behalf of any of the plaintiffs, or on behalf of the intervenor, shall inure to the benefit, and be deemed to be taken by all of the plaintiffs, and by the intervenor; and that all objections and exceptions, made or taken by any of the defendants, shall be deemed to inure to the benefit of all the defendants, or any defendant which may avail itself thereof.

A Well, for several years past we have turned considerable water from the pipe lines on Euclid Avenue, and turned it out through what we call the 19th street ditch, out into the first wash.

Q Can you give an idea of the amount of water which was taken that way?

A It would be from 200 inches up.

Q 200 inches would be the minimum?

A Yes, sir.

Q About what would you say to be the maximum?

A Possibly 300.

Q How long continued was that diversion during each season?

Mr. Waters: Objected to as suggesive and leading.

A Just as long as we could spare the water from the irrigation.

Mr. Waters: We will take a ruling upon that objection.

The Court: Overruled.

Mr. Waters: Exception.

Mr. Joliffe: Now, answer the question.

A Just as long as we could spare the water from irrigation.

The Court, Q I wish you would explain more in detail, and explain on the map, just where this water was turned into the wash that you speak of.

Mr. Joliffe, Q On this map of Ontario Colony lands, can you explain where the water was turned from the pipe line of the ~~Sunset Heights~~ San Antonio Water Company, and thence in a ditch or pipe line, or whatever sort of a conduit it was to the eastward to the Cucamonga wash.

A From the main pipe lines from the canyon, down through the main lines on the Avenue, and thence turned out into the gutters, and then through a ditch, at 19th street, to the first wash.

Q Can you identify where that main pipe line is that you are speaking of?

A It comes from about the end of this tunnel.

Q Above section 24 as indicated on the map?

Q. 320 Junction would be the minimum?

A. Yes, sir.

Q. About what would you say it is the maximum?

A. Possibly 400.

Q. The last question was that diversion during each season?

Mr. Waters: Objected to as argumentative and leading.

A. Just as long as we could spare the water from the irrigation.

Mr. Waters: We will take a ruling upon that objection.

The Court: Overruled.

Mr. Waters: Exception.

Mr. Joliffe: Now, answer the question.

A. Just as long as we could spare the water from irrigation.

The Court, Q. I wish you would explain more in detail, and explain on the map, just where this water was turned into the main that you speak of.

Mr. Joliffe, Q. On this map of Ontario Colony lands, can you explain where the water was turned from the pipe line of the ~~Southwestern~~ San Antonio Water Company, and Ontario in a ditch or pipe line, or whatever sort of a conduit it was, to the sentward to the Ontario wash.

A. From the main pipe lines from the canyon, down through the main lines on the Avenue, and thence turned out into the gutters, and then through a ditch, at 13th street, in the first wash.

Q. Can you identify where that main pipe line is that you are speaking of?

A. It comes from about the end of this tunnel.

Q. Above section 24 as indicated on the map?

A Yes, sir; it is in section 24.

Q Whereabouts do you take the water out, on section 24, after you make the diversion?

A We bring it along here, and over through our mesa lines, and down through into the Avenue.

Q Is that the Avenue there, through sections 30 and 31?

A Yes, sir.

Q Euclid Avenue?

A Yes, sir.

Q Where do you turn the water out of that pipe line?

A Through different places.

Q All on Euclid Avenue?

A Yes, sir.

Q Are any of them as high up as section 19?

A In below 24 there.

Q 24th street?

A 24th and south.

Q And above what street?

A 19th is the last turnout.

Q Are there lateral pipe lines leading from the main pipe line on the Avenue, through which you turn the water out, or do you turn it outon the Avenue?

A Into the gutters; we have openings made on purpose for it.

Q On the Avenue?

A Yes, sir.

Q And the slope of the ground is such that the water would flow toward Cucamonga wash?

A It comes down through the Avenue as far as 19th, and out a

big ditch constructed for the purpose of carrying off the storm waters.

Q How far does that extend?

A At that time to this first wash; since then we have constructed the ditch further on.

Q Then as I understand you, this water which you have been testifying about and which you say you turned into the wash, was all first taken from San Antonio Canyon, into your distributing system?

A Yes, sir.

Mr. Joliffe, Q For how many years has this diversion been continued, or about how many, as far as you know?

A I don't remember; several years.

Q I will ask you whether or not during the past year there has been any increase in the capacity of the pipes leading to that 19th street cutoff, and whether or not there has been a larger quantity of water taken this year to that vicinity from the San Antonio Creek?

A Taken this year?

Q Yes, the present year, and 1908?

A Beg pardon.

Q During thr winter of 1908 and 1909?

A Yes, sir; we put in a large pipe in the canyon, or from the canyon, down into our system, to carry 1500 inches more water.

Q And about what is the extent of the diversion which has been made this year?

A Oh, not more than ~~another~~ a good hundred inches ~~x~~ I suppose, for the reason that the gutter was washed out, and

we are waiting now to repair it, but we continued the ditch out 19th street, for about 2500 feet, across two or three more washes.

Q Can you indicate on this map, which is defendants' Exhibit D, the end of that ditch which you have named?

A It doesn't show in that there; it is about a mile east - the end of the ditch.

Q A mile east of what?

A East of Euclid Avenue.

Q Now, I will ask you if you know anything about any spreading of the flood waters of Cucamonga Canyon, above the 16th street wells, in recent years?

A Yes, sir; I have had men spreading water on them, on the washes.

Q Well, now, state just when that was commenced, if you are able to?

A The earliest record I have is in April, 1903; I was then told to send a man out to distribute what little water there was running down past 16th street.

Q Well, did you in fact distribute that water or cause it to be done?

A I did.

Q Now, state just what you did, or caused to be done, from that time on, with reference to the storm water in the Cucamonga wash?

A Whenever there was a storm and the water passed down by the wells, or through the Cucamonga wash, past 16th Street, I had orders to send men into the canyon, and distribute it through the gravels to keep it from going as far as 16th,

and I did so; I had men, and I have been there myself several times.

Q Are you able to point out on the map about the locality where this distribution was made, this map marked "Defendants' Exhibit D"? There is 19th street running there?

A All up through this wash.

Q From what point?

A From 19th street up; from 19th street north.

Q How far north?

A Clear into the canyon; clear up to above what we call 26th street.

Q Was there any distribution made south of 19th street?

A Yes, sir; when there was lots of water running across 19th and we couldn't control it above, we put men below to distribute the water.

Q How far below have you made any distribution?

A Below 19th?

Q Yes?

A Not far.

Q Well, as far as 18th street?

A Possibly. I worked down into the good gravels; wherever we saw a good place we turned out water.

The Court, Q I suppose your general purpose was to prevent the flood water running off altogether on the surface?

A Yes, sir.

Mr. Joliffe, Q I will ask you if you know what the condition of that Cucamonga wash or creek was at times of flood, with reference to running on down past 16th street, and still further south, at times of flood water, prior to the distri-

bution.

A Large quantities of water would run past 16th street, in the Cucamonga wash.

Q Where would it go to?

A I don't know; it went away south.

Q I will ask you how far south you have seen it running?

A At Tenth street; that is the furthest south I have seen it; I never had occasion to go below that.

Q Do you know anything about any shafts having been sunk in the Cucamonga wash, up near where it debouches from the mountains?

A I know of a shaft there; but it was not done under my direction; it was not sunk under my direction.

Q You know the fact that it was there?

A Yes, sir.

Q What do you know about waters having been turned into that shaft in time of floods?

A Well, we have turned in quantities of water there at different times.

Q About how much?

A 50 inches, about.

Q And for how long a time?

A Oh, just as long as we could keep the water up at that point.

The Court, Q Where is this shaft you are speaking of? I don't know as I understand you quite.

A It was a little above 26th street, pretty well up into the mouth of the canyon.

Q What is this shaft? One that is simply abandoned?

A

A Yes, sir.

Q No well there?

A No.

Q How deep is it about?

A I couldn't tell you; It was partially full of water every time I have seen it.

Q Is it quite a deep shaft?

A Yes, sir; it seems to be quite a shaft.

Q Approximately 10 or 15 or 20 feet?

A Well, it must be 50; I am not sure about that though. I said it may be 50. I didn't say it must be. It was my mistake.

CROSS EXAMINATION.

Mr. Britt, Q How long have you been in the employ of the San Antonio Water Company?

A About 13 years.

Q You say you were Superintendent of construction?

A I am now; yes, sir.

Q Areyou also in the employ of the Ontario Power Company?

A Well, I do a good deal of their work when necessary. Look after a good deal of their work.

Q You spoke about receiving orders for this, that, or the other work: From whom did you receive your instructions?

A From the General Manager.

Q Who is that?

A W. T. Leake.

Q Do you know whether he was acting as general manager of the San Antonio Water Company or the Ontario Power Company?

A As I understood it he was acting for both.

Q You spoke about a record, the earliest record you have,

Q You spoke about a record, the earliest record you have of spreading out the water of the Cucamonga Stream, being in April, 1903?

A Yes, sir.

Q What sort of a record is that?

A It is a record of the time of themen that I have under me. I know just where they are working and I put it down every night.

Q Had any work of that nature ever been done before?

A Not by me. Possibly by the zanjeros.

Q Have you that record with you?

A Yes, sir.

Q Let us see it if you please. That is under date, April 20, 1903, and the entry is T. Henry, Diverting Cucamonga Creek, $2.50" and that is what you refer to is it?

A Yes, sir.

Q Is that the only entry made that season?

A No, sir; there are several right along there in the book.

Q Where are the others? Probably you can find them much quicker than I can.

A There is the same entry there, the same man; this is just a record of men's time that I hunted up where this thing started, but it is quite a job to find out every one.

Q Well, let us see how much work was done of that nature. That is what we want to get at; we are less interested in the precise dates or amounts paid than we are in ascertaining the amount of work that was done for that purpose.

A I find on the 21st, man diverting creek.

Q Do you find how much time he spent that day for that

purpose?

A All day.

On the 23rd, I find, Diverted Cucamonga Creek.

Q How much?

A Five hours. On May first, 1903, all day, $2.50. May 2, 1903, $2.50, the same man. that is evidently the last of that season; I am running into May now.

Q Now how many men were empl yed? Just one?

A Just one; that is all I sent there; I went myself sometime; I don't know just how long I was there; off and on, probably half the time he was there.

Q Did he work at the same place every day?

A No; spreading the water different places.

The Court, Q Just what method was pursued in this spreading of water?

A To keep the streams, to keep the water from running away in too large a stream.

Q How would he work in doing that?

A Built up little dams and turned the water back into the larger beds of gravel.

Q If you found the water running through in a stream on the surface, you dammed it up and turned it aside?

A Yes, sir; turned it aside, where it would spread out into the wider gravel.

Mr. Britt, Q On April 20, this man Henry worked one day, $2.50?

A Yes, sir.

Q Now on April 21 it seems that he worked again?

A I think he worked on the 20th and 21st.

Q Now on the 21st did he work at the same place that he worked on the 20th?

A No, he probably moved to another place.

Q Did he divert the same stream?

A The same water; yes, sir.

Q He moved it down then did he or moved it up?

A Either down or up, just to spread it around to keep it from flowing away.

Q Where did he prosecute that enterprise? How far from the mouth of the Canyon? Do you remember anything about that?

A I couldn't tell you just how far; it was all the way from 19th street, almost to the mouth of the Canyon.

Q Why did he have to work on it again so soon after the 20th, or the 21st. In a few days he was working at it again. Why did he return to it so quickly? Do you know?

A Because some of the dams may have been washed out; and again if I sent a man to stop the water from flowing over 16th street, and he worked for a week, and the water still continued - -

Q When was that?

A In 1903.

Q What time?

A In April.

Q You don't seem to have any entry of it there. You didn't read it.

A I don't think I understand you; I think I read this plain enough.

Q You read about four or five different days and you said there was one man?

A Yes, sir.

Q Who worked spreading out, or diverting, I think your entry is, Cucamonga Creek?

A Yes, sir.

Q Do you say the stream was diverted twice, and at a different place?

A Just wherever there was a large stream of water we would try to make it smaller.

The Court: I am not sure but that you gentlemen misunderstand each other. Did you say a man had worked for a week or if - -

A No, Judge; I said if a man worked there for a week, and the water still ran past 16th street, I would send him back again.

Mr. Britt: Well, I misunderstood him: I thought he said a man did work there for a week.

Mr. Britt, Q Well, the creek that came down from the Canyon was not running much of a stream at that time of the year was it?

A No; otherwise I would have had more men out; one man was able to control it.

The Court, Q Do you mean to say that one man was able to prevent any water from running down on the surface?

A Yes, sir.

Mr. Britt, Q All of that, if it had been running on the surface, at that season of the year, would have sunk into the ground before it got down to the Base Line wouldn't it?

A Do you mean 16th street?

Q 16th Street is a little above Base Line isn't it?

Mr. Joliffe: The same thing.

Q Yes, sir; down to 16th street?

A Our object was to keep it from passing 16th street; that is the reason the man was there.

Q You didn't want it to come down to 16th street?

A Didn't want it to pass 16th street.

Q At the time this man commenced to work on the 20th of April, was the water running down as far as 16th street?

A Yes, sir; it must have been; otherwise the man would not have been there.

Q Do you know whether it was or not?

A Yes, sir; it was.

Q Did you see it?

A No - yes, I did see it; I passed over it.

Q Where did you pass over it?

A At 16th street on the way to the wells.

Q What wells?

A Our wells at 16th Street.

Q You passed over the water as it crossed 16th street?

A As it crossed 16th street.

Q How much of it was crossing 16th street?

A I couldn't tell you.

Q Was it a little stream or a big stream?

A Oh, possibly 150 to 200 inches; may have been 100 inches. It was quite a little stream.

Q What was it flowing in? In the channel of the creek?

A Yes, sir.

Q Flowing down toward the winery?

A Yes, flowing that way.

Q Did you pursue that stream down in the direction of the winery, to see how far it proceeded before it sank into the

ground?

A No, sir.

Q This man then, Henry his name was, he did all of that work

A For that season; yes, sir.

Q Where is he now, do you know?

A In Ontario.

Q What is he doing? Is he in your employ? In the employ of the San Antonio Water Company?

A No, sir.

Q On those days that you mentioned, did he put in his time all day, each time that you have an try made of wages paid him on this particular work, or was he doing something else for the company?

A He was doing that particular work.

Q What is the next entry you have of similar work done the next season?

A That would be a hard thing to find; I don't see anything in the next year; possibly there was no water, but I have other books that I have more entries in.

Q Let us see when it was done the next time? After a few days in April and May 1903.

A I have an entry here; I don't know whether it is the first or no on February 20th.

Q What year?

A 1905. T. Henry and a man named Woodhead in canyon distributing water.

Q That is the first you find?

A That is the first I find; may be by hunting back I can find more; on February 16th I find another; Woodhead, $2.50.

February 3rd and February 4th, two men.

Q All right; proceed; give us all that you find on that subject?

A That is a mistake; on February 4th, there was 1, 2, 3, 4, 5,- 6 men. On February 5th, there was two men - no - same number of men,- six men.

Q Well, anything else you find during that season?

A By looking over the book I will probably find several places; every time it run we would send men into the canyon to distribute the water. February 16th, one man, $2.50; February 18th, two men; February 20th, two men; March 9th, four men; March 13th, one man; March 14th, one man; March 18th one man; March 20th, one man; March 21st, one man; March 22, one man.

Q Any more that season?

A Possibly; I am just at April now. May 5th, one man; May 6th, one man; May 7th, one man; May 8th, one man; May 9th, one man; May 10th, one man; May 11th, one man. I am away into June. I suppose there is no more that season.

Q That is all there was for the season of 1904-1905?

A 1904.

Q No, that was 1905.

A 1905; excuse me.

Q Wherever you say one men on a certain date, do you mean that there was a day's work, by one man on that day in that place?

A Yes, sir.

Q Where there were more men that means that many more additional days work?

[illegible]

Q. [illegible] [illegible] [illegible]

A Yes, sir.

Q Your record shows payment of wages to as many men as you mention on each particular date for those purposes?

A Yes, sir; of those men under my employ; yes, sir.

Q Where was this work carriedon? How far above 16th street or the Base Line road?

A At different point, all the way along the channel.

Q Well, all the way along the channel how far?

A All the way from - possibly about 18th, to the mouth of Cucamonga Canyon,- a little south of the mouth of Cucamonga Canyon.

Q From 18th street as the southern limit, up to the mouth of the canyon as the northern limit?

A I am not so sure about 18th,- the men might have come down a little lower than 18th street.

Q How far is 18th street from 16th street?

A A half a mile.

Q The streets are a quarter of a mile apart?

A Yes, sir.

Q The Court asked you about the plan of procedure in diverting the water, but I didn't get it quite clearly: What was the mode of operation in taking the water out. What sort of tools did you employ?

A Shovels and picks.

Q And what didyou do with the tools?

A Built little dams to stop the water.

Q What sort of dams? Put in some cobbles or boulders?

A Anything to stop the water.

Q And then what next?

A. Yes, sir.

Q. Did you [illegible] [illegible] [illegible]

A Then distribute it through the gravels.

Q And how did you distribute it through the gravels?

A As the water would raise against the dam that we would put in why it would flow out over a different part of the gravels.

Q Did you dig any lateral ditches, canals or trenches?

A Yes, sir.

Q What kind and how many?

A Probably two or three hundred a day, when the men were there.

Q How far from the creek?

A The length of the channel do you mean?

Q Yes, sir, the stream, from each side?

A It might be a foot, or half a dozen feet, or a dozen feet, or 20 feet.

Q That is what you call canals or ditches?

A Well, hardly. Channels.

Q And sometimes you put in this rock dam and left it there without any channel did you extending laterally from the creek, merely to dam the water up in a particular place so that it would run slower?

A We would dam it to run it over the gravels; as it would raise it would run in different gravel, and take different channels.

Q Then the object of this damming and this little excavation that was made was to widen the channel at those places, was it?

A No, it wasn't to widen the channel; it was to distribute the water through the gravels, to stop the water from going

down past our wells.

Q You expected to accomplish that object by widening the channel some?

A Yes, you might call it widening it out some.

Q From one foot to ten feet wider?

A The whole channel.

Q I understood you to say you made your lateral trenches or ditches from one to ten feet in length?

A Yes, sir; but sometimes by making a channel a foot or two feet long the water would run for two or three hundred feet; it would merely give it an opening into another piece of gravel.

Q Now, I notice on March 16th, you had a man or men at work and on the 20th you had a man or men at work: Did these dams or obstructions that you put into the channel of the creek wash out so that you had to go over the ground again?

A Some of them, yes; if it rained during the night ~~it~~ they would invariably wash out.

Q So that with every rain it was necessary to go to work again?

A Yes, sir.

Q Well, if there was a heavy storm, and a considerable fall of rain coming down from Cucamonga Creek, I suppose they all washed out?

A Yes, sir.

Q If there was a large volume of water coming dwon the creek it was impossible to control it I suppose?

A For the time being; yes, sir.

Q That creek spreads out into a number of different channels

down particular walls.

Q. Did anything in particular that helped to determine the damaged areas?

A. Yes, you could see it coming in on the roof.

Q. Was the fire in the roof area?

A. The whole dormer.

Q. I understand you to say you were using Lennox furnaces on different floor levels in Lennox?

A. Yes, very low installed in basement a foot or two below the floor. Long the water would not be in to give trouble; it would usually give it an opportunity to burn more quickly or spread.

Q. Now, I believe in your direct, you said it was in the at the time you had a lot of heat; did there come a time or circumstance when you put some in the stove and the fire was burning? Did there come a time when you had to put some in the stove and the fire was burning?

A. Some of them, yes; as I recall, I put some in the middle fireplace.

Q. So that when that was in the condition it is now, it was?

A. Yes, sir.

Q. Well, if there was a lower stove, was it your belief or was it your opinion that it or Lennox, I mean the oil burner only?

A. No, sir.

Q. If there was a lower stove, or rather working down the stairs in the basement?

A. Not the same burner, no.

Q. Then there was not more stoves or burners involved?

over the debris cone, doesn't it, below the mouth of the canyon?

A Yes, sir; after it gets down a certain distance.

Q About what distance below the mouth of the canyon does it beginnto fork out, open out into a delta?

A I couldn't tell you; I don't know.

Q Do you know how far above 18th street?

A It must be quite a distance above 18th Street.

Q Probably two miles or so or a mile and a half?

A A mile may be.

Q There is one of those channels that runs a long way to the west, about half way to Ontario, from the Eadie tunnel doesn't it?

A One of the channels?

Q Yes, one of the channels, into which the Cucamonga Creek spreads out?

A I don't know; I never saw it.

Q Now, these operations that you were carrying on, were they in one of the channels, or more than one or all of them? That is the operations of obstructing the flow of the water, and spreading it out as you say in the gravel?

A In all the channels, wherever there was what we thought too much water.

Q Did you carry on that work, only when the water flowed below 16th street, or did you carry on the same character of work when it was flowing anywhere above 16th street?

A Well, we didn't know just what time it would stop at 16th street.

Q Your object, however, was to prevent it going down as

far as 16th street?

A Yes, sir.

Q You have mentioned a number of men employed at different times in 1905, from sometime in February, until sometime in May,- different days: Were those men all employed in diverting water, from the Cucamonga Creek, or spreading out water in the Cucamonga Creek, or were some of them employed on some stream in the San Antonio Canyon?

A Those that I have mentioned were employed in the Cucamonga Creek.

Q Nowhere else?

A Not those men; not those items that I read you.

Q Were you doing any work in San Antonio Creek?

A Yes, sir; we had a couple of men up there sometimes during a storm.

Q Who determined when this spreading of the channel in the Cucamonga Creek should be done? You or Mr. Leake?

A Mr. Leake; I received my orders from Mr. Leake.

Q These men who were doing the work, were they men regularly in the employ of the company, regularly in the Employ of the San Antonio Water Company or the Ontario Power Company?

A They were regularly employed by the San Antonio Water Company.

Q When they went up there they were not new men taken on for that special purpose, but were part of the regular force?

A Not always.

Q Usually?

A Usually we took our regular men and sent them up there.

Q What were your directions from Mr. Leake as to the limits

within which you were to work up and down the channel, down as far as 18th Street south, and the north to the mouth of the Canyon?

A Mr. Leake's orders, as near as I can remember, was to keep it as far above 16th street as possible; keep it above 19th street if possible, keep the water above; but I have always tried to keep it above the 16th street wells.

Q That is above the 16th street wells?

A Above the 16th street wells; it is just above 16th street.

Q Was any of that sort of work done in 1906, in the Cucamonga Creek?

A I don't remember; whenever there was any high water I had men in the canyon, but I can't tell you just what the dates are unless I look it up.

Q Well, look at your book, and see whether you have any entries in the season of 1905-1906?

A I find on March 14th, 1906,- 1, 2, 3, 4, 5, men in Cucamonga Canyon; I don't know whether there was any before that or no; it was evidently right after a storm; there was certainly some after it.

Q Well, Mr. Manley, you might, without taking up the time of the Court in this matter, consult your books, probably, out of court, and make a memorandum of the several days, the number of men employed for this purpose, in the season of 1905-1906, and 1906-1907 , and 1907-1908.

Mr. Britt: He might make his memorandum and send it in here, and we would not require him to appear again, unless for some special reason we would want to cross-examine him.

Q Now, about this taking of water from the San Antonio

Creek: Did you have charge of that process, that business?

A Taking it from the San Antonio Creek and turning it over-

Q yes, sir?

A No, sir.

Q Who did?

A The zanjero.

Q When was that done first?

A That I couldn't tell you. I have seen it for a number of years.

Q Is there any way of ascertaining when that was done first by reference to any record kept by your zanjeros, the zanjeros of the San Antonio Water Company?

A Possibly the zanjeros will remember; I don't know anything about their records.

Q You are unable to state yourself?

A I couldn't do it.

Q I think you said that there was two or three hundred inches sometimes taken over in that way?

A Yes, sir; a large quantity.

Q That was only in time of storm?

A No, it is right along.

Q You stated to the Court that that was taken from the San Antonio tunnel or Canyon, and turned out where? At 19th street?

A It was turned out at three or four different points; one at 22nd street I remember, and one at 19th street. There may have been others but I can't place them.

Q It was turned into a gutter there?

A Turned into a big ditch there, andturned out from the

pipe lines into the Euclid Avenue gutters. ; and thence through the 19th street ditch, a ditch constructed to carry storm water.

Q And the water in the 19th street ditch flows in which direction?

A Flows east.

Q Now, you notice that this map here, Defendants' Exhibit D, shows apparently only one Cucamonga wash: There are several washes aren't there?

A Several small washes down through there.

Q Further west than what is delineated on the map Exhibit D

A Yes.

Q That water only reached the first wash, if it reached any washes at all?

A It reached the first wash.

Q Where is that first wash situated on 19th street? Where does it cross 19th street?

A About half or three quarters of a mile east.

Q East of what?

A East of 19th.

Mr. Joliffe, Q East of Euclid Avenue?

A East of Euclid Avenue.

Q Has all the water that you have turned out in the manner you have described there, gone through that 19th street gutter or ditch?

A At those times; yes.

Q That which is turned out at 22nd Street comes down one of the north and south streets, and joins that which is turned out at 19th street?

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Q Further west than what is delineated on the map Exhibit D?

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Q That water only reached the first wash, if it reached any washes at all?

A It reached the first wash.

Q Where is that first wash situated on 19th street? Where does it cross 19th street?

A About half or three quarters of a mile west.

Q East or west?

A West of 19th.

Mr. Moffitt, Q West of Euclid Avenue?

A West of Euclid Avenue.

Q Has all the water that you have turned out in the manner you have described there, gone through that 19th street culvert or ditch?

A At those times; yes.

Q That which is turned out at 22nd Street comes down one of the north and south streets, and joins that which is turned out at 19th street?

A The 19th Street ditch intercepts all the water flowing through the Avenue from both sides.

Q And that reached the wash half or three quarters of a mile east of Euclid Avenue?

A Yes, sir.

Q Did you ever measure that distance from Euclid Avenue to that wash?

A I never did.

Q You say half a mile to three-quarters: Is it nearer half or three-quarters?

A Well, I can't tell you; it is quite a distance; it is several tens and I can't tell you how many.

Q It does not reach the map which is delineated on the map here, Exhibit D?

A No, sir.

Q Now, that water which is taken through the 19th street ditch, or gutter, east of Euclid Avenue, is discharged from the San Antonio Water Company's mains is it?

A Yes, sir.

Q It is in pipes, and those pipes take the water where?

A Through the colony, and distribute it through the colony

Q You do not understand the word "take" in the same sense that I am speaking of: I refer to where it takes up the water, receives the water? Where does it receive the water that is discharged through the 19th street ditch?

A From the San Antonio Canyon.

Q At what times in the year? All the time?

A All the time.

Q At what times in the year is it turned out in the manner

that you have described?

A Just as soon as the irrigation season is over and before it starts,- between the times of irrigation.

Q Do you know whether the 19th street that you describe in Ontario Colony is on a line connecting with the 19th Street in the Cucamonga District, which you spoke of a while ago as above 16th street? Between 16th Street and the Mouth of the Cucamonga Canyon?

A It is the same thing.

Q The same road runs across the country does it?

A Yes, sir.

Q Where is that 19th street, with reference to the well called the Sourwine well?

A The Sourwine well I believe is on 19th street, further east.

Q And that same line, 19th street, runs on west, and crosses Euclid Avenue, at the place you have mentioned as the locality of the ditch?

A Yes, sir.

Q Into which that waste water of the San Antonio Water Company is discharged?

A Yes, sir.

Mr. Haskell, Q You know up near the Cucamonga Mountains, the channel of Cucamonga Creek formerly spread further west toward Upland, than it now does, do you not?

A I don't know that.

Q Well,, don't you know of some permanent barriers that have been erected there, in some of those channels, to keep

the water from spreading out?

A Permanent barriers; no, sir; I don't know of any.

Q Don't you know of any?

A I didn't put any there.

-o-

E. A. MAGILL.

E. A. MAGILL, a witness called by defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Mr. Joliffe, Q What is your name?

A E. A. Magill.

Q Where do you live?

A Ontario.

Q Do you have any employment or position, with reference to the San Antonio Water Company?

A Zanjero.

Q How long have you been zanjero?

A Less than a year; it will be a year the 28th of this month. - or the 19th of this month.

Q I will ask you if you know of the taking of any water from the San Antonio Creek or Canyon, over to the Cucamonga Creek or wash, or vicinity?

A I do.

Q Well, now, tell us just about how that was done, and how much water was so taken?

A It was turned in on the 19th street ditch, east. How much I don't know.

Q You made no measurements?

A I have made no measurements of it.

Q Do you know about the amount of water which was turned into the ditch, or into the pipe line that led out from the San Antonio Creek, during the present winter,- the pipe line that has been spoken of as the new pipe line?

A No, I do not at present; it has been shut off for a few days for repairs, and since then I have not made any measurement.

Q Well, prior to that time do you know?

A No.

Q Do you know of any water being taken from the Cucamonga channel during the present year, and if so about how much has been so taken. I mean the Eadie tunnel. I speak of it as the Eadie tunnel or the Cucamonga tunnel?

A That is the tunnel on the west side of the hill?

Q Yes, sir?

A Yes, sir. All the way from 60 to 240 inches.

Q When was the larger amount taken?

A I don't know unless I look in my book.

Q Well, I inquire particularly during the winter season, since the close of the irrigating season how much has been taken?

A Sixty inches steady flow, nearly. We started in with less than 60 and it is up to 60 now.

Q Do you mean by that the amount taken by the San Antonio Water Company?

A Yes, sir; since the close of the irrigating season.

Q Do you know the total amount that has been taken from there by any party, since the close of the irrigating season?

A Why we get the same; both companies get the same.

Q What other company do you refer to?

A The one that Mr. Caldwell is the zanjero of; I suppose that is the Cucamonga Company.

Q Do you know what is done with the water that is taken by ~~the San Antonio Water Company?~~ San Antonio Water Company?

A Turned into the city reservoir, about 40 inches of it.

Q I will ask you whether or not it has been all beneficially used?

A It has been all used for domestic purposes.

Q Is it or not a fact that any of it has been turned out of the pipe lines and allowed to run down past the San Bernardino road?

A None of it.

Cross Examination.

Mr. Britt, Q Do you know when water began to be turned out of the mains of the San Antonio Water Company into the 19th street ditch?

A No, I couldn't say the exact date.

Q You have been zanjero since March 19th of last year?

A Yes, sir.

Q When did you first see the water turned from the San Antonio Water Company's main, into the 19th street ditch,- about what time, if you don't remember exactly?

A Sometime in December; it was after the irrigating season, after we quit irrigating.

Q You don't know what quantity?

A No, I didn't turn it out.

Q Did you trace that water to see where it went?

A No.

Q You merely saw it running out 19th street?

A I merely saw it running out 19th Street.

Q What was it coming out of?

A Pipe line, and down the Avenue, and out of another pipe line on 22nd I believe.

Q Down Euclid Avenue?

A Yes, sir.

Q Is Euclid Avenue paved there?

A It has a gutter, stone gutter.

Q At 19th street is there a gutter?

A Yes, sir.

Q What kind?

A A stone gutter, a stone ditch that runs east; it is paved with stones so it won't wash.

Q How wide is that stone ditch at 19th street, at the corner of Euclid Avenue?

A I don't know; six feet wide or eight feet wide; I don't know exactly what it is.

Q How deep is it?

A I think the south bank must be seven or eight feet high, if not more.

Q The south bank of it is deeper or higher than the north bank?

A Yes, sir.

Q Is the bank made of stone?

A Yes, sir; it is faced up with stone.

Q How far does that run east?

A About a quarter of a mile that way.

Q And what does it terminate in? What intersects it at the

Q And what does it terminate in end of that quarter of a mile? A wash?

A A wash.

Q A wash running from north to south?

A I believe so; I have not been out that way for a year or so; and they put in a new pipe line since then, a thirty-inch pipe.

Q To what creek does that wash belong; as a drainway?

A Cucamonga Canyon.

Q That you say is about a quarter of a mile east of Euclid Avenue?

A At 16th Street it is half a mile.

Q I am speaking about 19th street?

A It is a little less than half a mile.

Q I am talking of the stone ditch you spoke of.

A It runs out two tens, the stone ditch, and then it opens out into an open ditch I believe,- a kind of a wash out in there.

Q It opens into one of the Cucamonga washes?

A I think it does.

Q By two tens, I suppose you mean two tracts of land in the form of a square containing ten acres?

A A quarter of a mile.

Q Then about a quarter of a mile - -

A Or more; I don't know how much more.

Q A quarter of a mile or a little more east of Euclid Avenue the water running from the mains of the San Antonio Water Company down Euclid Avenue, and into this stone ditch, is discharged into a wash, is that it?

A Yes, sir.

Q Now, you were talking about some water from the Eadie tunnel, and there was 60 inches I think you said received from the Eadie tunnel: Received by whom? Who received that 60 inches?

A It flows over the weir.

Q Flows over the weir where?

A At the mouth of the tunnel.

Q Over one weir or two weirs?

A Over two weirs; there is 60 inches going over each weir.

Q And the 60 inches that you speak of is used for domestic purposes?

A Yes, sir.

Q And was taken into what pipe line?

A Taken into the 30 inch, and the 22 inch to Ontario.

Q Taken through both those pipe lines?

A Yes, sir.

Q To Ontario?

A Yes, sir; or to Uplands; it runs into the Ontario City reservoir,- 40 inches of it.

Q It passes through the sandbox there at the east boundary of the Ontario Colony lands?

A Yes, sir.

Q How much of it reached the sandbox? Did you ever measure it there or see it measured?

A Yes, sir; all of it; very little seepage.

Q Are you accustomed to measure water yourself?

A Yes, sir.

Q Did you keep any record of your measurements at that point

A. Yes, sir.

Q. Now, in a very general sense what does that the Sales Manual, and there was an inside I write you and receive Transition Sales Manual; therefore is about the Transition Sales of Service?

A. It flows over the Sales.

Q. Flows over the Sales Manual?

A. Is the majority of the Manual.

A. Does the Sales as the Manual?

A. Over the years; there is [illegible] [illegible].

Q. And the Q Sales Manual [illegible] of it was the Sales Manual?

A. Yes, sir.

Q. And was there [illegible] Line?

A. There was [illegible] and the Q was in [illegible].

Q. Where [illegible] Sales Line?

A. Yes, sir.

Q. To Omaha?

A. Yes, sir; to Omaha; it was [illegible] the Omaha City Commission. My [illegible] is [illegible].

Q. In passing [illegible] the Omaha Line at the main Division of the Omaha Telephone Company?

A. Yes, sir.

Q. The main or in Omaha the main? Did you ever [illegible] there as the in Omaha?

A. Yes, sir; All of it; [illegible] Omaha.

Q. Are you [illegible] in Omaha main [illegible]?

A. Yes, sir.

Q. Did you [illegible] [illegible] at that point

A Not at that point, no.

Q Did you keep any record of your measurements anywhere?

A Yes, sir.

Q Where?

A At the mouth of the tunnel.

Q Have you got that with you?

A Yes, sir.

Q Let us see it if you please.

A It is also recorded on a chart.

Q Where is the chart?

A It is in the office.

Q Those measurements to which you point appear to be made in July?

A Well, here are November.

Q And the July measurements, seem to show 190 and some inches do they not?

A Yes, sir.

Q That was the amount being received into the pipe lines of the San Antonio Water Company at that time?

A Yes, sir.

Q Now, let me see the entries where there is a 60 inch discharge?

A There it is, in January, November and December.

Q Well, now, take November 3rd: State what the record is you have?

A I have .474 of a foot.

Q What does that mean?

A About 230 inches.

Q That is November 3rd?

A Yes, sir.

Q How do you reduce your fraction of a foot to inches?

A I don't know; I take the measurements with a rule for my part, and leave the engineer to measure the other part; I don't know his table.

Q Well, that is .474 of a foot, that is the depth of the water flowing over the weir, was it?

A Yes, sir.

Q You measured there and found that the water where it flowed over the weir was .474 of a foot in depth, a little less than six inches?

A Yes, sir.

Q That is right is it?

A Yes, sir.

Q And the weir is how wide?

A 60 inches.

Q Well, that is what it was on November 3rd?

A Yes, sir.

Q What was it at other times in November?

A November 18, .456,- 215 inches.

Q Give us what else you have?

A November 25th, .493,- 242.5 inches.

Q Well, proceed?

A December first, .474,- 222.5 inches. December 16th,- we closed down then; it was reduced then to - we didn't have any measurement there; that is 2 3/4 inches over a 30 inch weir, making about 45 inches; I didn't have the scale with me that morning; they were making repairs.

Q That was not measured over the 60 inch weir?

A Yes, sir.

Q How do you reduce your fraction of a foot to inches?

A I don't know; I take the measurements with a pole for my part, and leave the engineer to measure the other part; I don't know the table.

Q Well, that is .474 of a foot, that is the depth of the water flowing over the weir, was it?

A Yes, sir.

Q You measured there and found that the water where it flowed over the weir was .474 of a foot in depth, a little less than six inches?

A Yes, sir.

Q That is right is it?

A Yes, sir.

Q And the weir is how wide?

A 60 inches.

Q Well, that is what it was on November 3rd?

A Yes, sir.

Q What was it at other times in November?

A November 11, .416,- 2.5 inches.

Q Give us what else you have?

A November 25th, .423,- 2.62.5 inches.

Q Well, proceed?

A December first, .474,- 2.62.5 inches. December 16th,- we closed down then; it was reduced then to - we didn't have any measurement there; that is 2 3/4 inches over a 60 inch weir, making about 45 inches; I didn't have the scale with me that morning; they were making repairs.

Q That was not measured over the 60 inch weir?

A No; over a 30 inch weir; the other weir is an angular weir, and we had to divide them up, when we closed the water down so it would be half and half.

Q What other measurements have you?

A December 22, height .244 over 30 inch weir. December 29th, .246 over 30 inch weir. It runs to January 5th, .251. January 11th, .252. January 12th, .253. January 28th, .260. February 6th, .265. February 13th, .274. February 22nd, .274.

Q That is the last is it?

A Yes, sir.

Q All these measurements since January first were in 1909?

A There was another measurement made the other day that I failed to take my book out; it was the same as this last measurement, made on March 2nd.

Q Those have been all since January first, 1909?

A Yes, sir; 1909.

Q Were you along the ditbh line every day since you shut down in December?

A Every day?

Q Yes?

A Rainy days and all I suppose?

Q Yes?

A No, I haven't been over the pipe line but three days.

Q During that while?

A Since it shut down in December.

Q What do you mean by shutting down?

A Well, we closed the tunnel down from 240 inches, down to 60 inches.

Q How is that done?

A A bulkhead, - a gate.

Q In the tunnel?

A Yes, sir.

Q And you don't know anything about this water previous to 1908?

A No, sir.

Q March, 1908? You don't know how much was wasted there before that do you?

A No, sir.

Mr. Haskell, Q I understood you to say that during this last winter there has been 60 inches of water taken through the Eadie tunnel to Ontario?

A Yes, sir. Or less than 60; it was less than 60 at the start, but since the tunnel filled up it was nearly 60.

Q And 40 inches had been turned into the City reservoir at Ontario?

A Yes, sir.

Q What becomes of the other 20?

A It takes 10 inches to run the Avenue pressure line, and the rest of it is run to three other pressure lines.

Q None of the time has there been over 60 inches?

A No, sir.

Q Do you know how much is running there now?

A Yes, sir.

Q How much?

A About 60 inches.

Q Well, now, you haven't been over the line but three times

I understand?

A That is all.

Q How do you ascertain whether it is 60 or more?

A At the mouth of the tunnel?

Q Yes, sir?

A Well, there is a weir there

Q And you have been there only three times?

A I have been there every week at the mouth of the tunnel but not over the line.

Q But did not follow the line?

A No, sir.

Q And you did not cross this place where water is sometimes turned down in the wash?

A A That is where it is turned down in the wash is shut by a lock.

Q But you didn't cross that place on your trips?

A Yes, sir; I crossed one wash - two washes.

Q Well, at this turn-out, this turn-out there at the wash?

A No, sir; there is no turn-out in the wash.

Q So you have not seen that this winter?

A There is no turn-out in the wash.

Q Well, this place where there is a turn-out, that is there

A Yes, sir.

Q Some distance west of the box at the mouth of the tunnel?

A Yes, sir.

Q You did not pass that place, when you made your trip?

A Yes, sir; but I didn't go up to it; I didn't go to it; that is locked.

Q And didn't see it?

A Yes, I saw it but at a distance.

Q How far away?

A About 300 yards.

Mr. Britt, Q Did you ever see water at all turned out at that place in the wash where you say it is locked up?

A No time only when I turned it out.

Q When did you turn it out there?

A Last June and July.

Q For what length of time?

A About a week, to irrigate the eucalyptus grove,- a week for irrigating purposes.

Q How much of a stream did you turn out there?

A About 60 inches.

Q Is that all there was flowing in the pipe then?

A No, sir.

Q How much was flowing in the pipe?

A About 190 inches.

Q Where was the balance of it going?

A To Ontario.

Q Did you at any time measure that water at the sandbox?

A Yes, sir.

Q During the time, since the tunnel was shut down in December last, did you measure the water at the sand-box?

A Only twice.

Q Have you got the measurement with you?

A No, sir.

Q Do you remember what it was?

A It was more than it was over at the tunnel; Mr. Fuller

was dropping some down from the overflow from the other reservoir a little, so it made it practically more than I was getting from the tunnel.

Q An overflow from the other reservoir?

A Yes, sir; Upland reservoir.

Q Is there water coming down to that sand box from the Upland reservoir?

A Yes, sir.

Q Was that out of the water from the 16th street wells?

A No, sir.

Q Where then?

A San Antonio.

Mr. Haskell, Q During the winter season you have a large amount of stream water from San Antonio Creek running to waste all the time don't you?

A I don't, no; up in the other district, up in the upper part of the colony there is, yes.

Q Belonging to the San Antonio Water Company?

A Yes, sir.

Q Quite a large stream?

A Yes, sir; turned out east, most of it.

Q And it is part of the stream that is turned out, as the witnesses have testified, turned out at 19th street, into this wash? A Yes, sir.

Q And it is turned out of the same system,- it is a continuation of the system for distributing water, all the way from San Antonio Canyon, all the way down to the lower part of Ontario Colony, isn't it? A Yes, sir.

-o-

[illegible] the [illegible] [illegible] [illegible]

W. J. KINCAID.

W. J. KINCAID, a witnesspreviously sworn, being recalled by defendants, testified as follows:

Mr. Mc.Kinley, Q On your previous examination, you testified to the various developments that you observed made there, in the region in controversy here, such as the Haskell well, the Stowell wells and so on: I don't think you fixed the times at which you observed that: about when was it you saw those?

A I would like to have a little more of the testimony read so that I can place the date or the time.

Q Well, did you observe those developments at the time they were begun, or how soon after they were begun?

Mr. Britt: Which developments?

Mr. Mc.Kinley: The ones I have described in the preceding question?

A At the time they were being done.

Q And you observed the Haskell well, and the changes in the Eadie tunnel and the Stowell wells, and the 16th street wells, such as had been constructed, prior to December 23rd, 1902, when you made a conveyance to the Old Settlers' Water Company?

A Yes, sir.

Q You were the W. J. Kincaid, who was plaintiff in the case brought to restrain the diversion of water to Ontario, were you?

A I was one of them; yes, sir.

Q You were fully informed with reference to the facts in regard to that diversion at that time?

A Yes, sir.

[illegible]

[illegible] by defendants, testified as follows:

Mr. Tinley: [illegible] qualification, [illegible] [illegible] in the [illegible] [illegible] there, in the region [illegible] here, such as [illegible] well, the Stassi wells and so on: I don't think you [illegible] the times or [illegible] [illegible]: about when was it you was there?

A. I would like to have a little more of the testimony read as [illegible] the date or the time.

Q. Well, did you observe these developments at the time they were happening, or has been after they were happen?

Mr. Brin: Objection.

Mr. Tinley: The mere I have question is [illegible] question?

A. At the same time, [illegible].

Q. And you observed the Stassi well, and the [illegible] in the Stassi [illegible] and the Stassi wells, and the [illegible] wells, and we had been [illegible], prior to [illegible] 1962, when you made a [illegible] to the Oil Conservation Commission?

A. Yes, sir.

Q. Do you [illegible] Counsel, the [illegible] plaintiff is [illegible] [illegible] the [illegible] of water in [illegible], [illegible] [illegible]?

A. I was [illegible] time, sir.

Q. Do [illegible] informed with reference to the [illegible] [illegible] [illegible] at that time?

A. Yes, sir.

Q You were a stockholder in the Old Settlers' Water Company: Were you an officer?

A Not now.

Q Have you been an officer?

A I have been; yes, sir.

Q When were you an officer?

A I was an officer of the Old Settlers' Water Company about three years ago.

Q What position did you occupy?

A I was secretary part of the time.

Q For how long a time were you secretary?

A I think for one or two years.

Q About three years ago - Were you secretary at any time prior to the bringing of this suit?

A Yes, sir.

Q For long prior to the bringing of this suit?

A I think one or two years.

Q That is the only position you have occupied in it is it?

A I wasx one of the directors.

Q You were a director?

A I was a director; yes, sir.

Q When were you a director?

A And secretary at the same time.

Q At the same time you were director and secretary?

A Yes, sir.

Q You were not a director at any time previous to that?

A I don't think so; I don't just remember.

-o-

Q. Do you have a photograph of the Kid Gloves' Team?

Member: [illegible]

A. [illegible]

Q. Have you been [illegible]?

A. [illegible]

Q. When were you on [illegible]?

A. I was on [illegible] the Kid Gloves' Team [illegible]

[illegible]

Q. What activity did you [illegible]?

A. I was [illegible] [illegible]

Q. Do you have a film [illegible]?

A. [illegible]

Q. [illegible] - Does [illegible]

[illegible] on the [illegible]?

A. Yes, sir.

Q. The last [illegible] of the [illegible]

A. [illegible] on the [illegible].

Q. Then is the only [illegible] [illegible] in it?

A. I was one of the [illegible].

Q. You were a [illegible]?

A. I was a [illegible] [illegible].

Q. What was [illegible]?

A. Not [illegible] [illegible].

Q. Is [illegible] [illegible] [illegible]?

A. Yes, sir.

Q. Did [illegible] [illegible] [illegible]?

A. I don't think so; I don't [illegible].

ROBERT MANLEY

ROBERT MANLEY, previously sworn, recalled by defendants testified as follows:

DIRECT EXAMINATION.

Mr. Mc.Kinley, Q I will ask you if you have since leaving the stand, examined your books for the memorandum which which was called for by Judge Britt?

A I have sir.

Q Are you now prepared to give the data for which he called?

A Yes, sir.

Q You may now read it to the reporter.

A Do you want it from where I left off?

Mr. Britt: Yes.

A That was May 11th, 1905.

Mr. Britt, Q I think it was; I think that was the date.

A January 20th, 1906, two men.

The Court: Why not put this statement in as an exhibit? It is all typewritten.

Mr. Mc.Kinley, Q Did you remember that you had it until after you left the stand?

A No, sir; I didn't remember that it was in that form. Mr. Leuke handed it to me.

Q You have verified it?

A Yes, sir; I have gone over the whole book. I had it in my pocket at the time without knowing that it was in that form

Q You have checked it over with the book since?

A Yes, sir; I have checked it over - every item is correct.

Mr. Joliffe, Q I notice your memorandum here stops with the year 1907: Have you any record of work done along the same lines since that time?

A Yes, sir; I have at home; at Ontario. I have not that book with me.

Mr. Joliffe: Is it satisfactory that this witness may prepare that record and send it here under the same arrangement as before?

Mr. Britt: Yes; assuming that it is in the same form, and the same notations here will mean the same thing, the tabulation which he presents later.

Mr. Joliffe: With that understanding that is all.

CROSS EXAMINATION.

Mr. Britt, Q This tabulation was made by yourself, sometime ago was it?

A Yes, sir.

Q Not made today. And it contains columns, with various dates, as April 15th, 1903, and so on down, the last being April 5th, apparently, 1907?

A Yes, sir.

Q And the column then following those dates is of this character. One man at $2.00; other men at $.50 and so on. Those indicate I suppose, those figures, that notation means that oneman was employed for this distributing of the water in the Cucamonga wash?

A Yes, sir.

Q And that is the amount of wages paid to him on those several dates?

A Yes, sir.

Q And the next column shows the amount of money paid?

A Yes, sir.

Q And the various summaries appearing in those columns indi-

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gate I suppose the total, as for example in 1903 there is $8.92?

A I suppose so; I have not totalled them.

Q That is what it is intended to mean?

A Yes, sir; that is what is intended to mean.

Mr. Joliffe: We offer this in evidence.

Said document is admitted in evidence, marked

"DEFENDANTS' EXHIBIT F

and is here extended in the record as follows:

DEFENDANTS' EXHIBIT F.

Distributing water in Cucamonga wash.

April 13th, 1903	1 man at $2.00		$2.00
" 20th,	1 man at 2.50		2.50
" 21st	1 man at 2.50		2.50
" 23rd	1 man at 2.50 - 4 hrs.		1.12
	Car fare		.80
			8.92
Feb. 3rd - 1905	2 men and car fare		3.42
" 4th	6 men " " "		11.90
" 5th	6 " " " "		12.05
" 16th	1 man (Woodhead)		2.50
Mar. 13th	1 " "		2.50
" 14th	1 " "		2.50
" 18th	1 " "		2.50
" 20th	1 " "		2.50
" 21st	1 " "		2.50
" 22nd	1 " "		2.50
May 5th	1 " Henry and car fare		2.20
" 6th	1 " " " " "		2.20
" 7th	1 " " " " "		2.20
" 8th	1 " " " " "		2.20
" 9th	1 " " " " "		2.20
" 10th	1 " " " " "		2.20
" 11th	1 " " " " "		2.20
			$60.27
Jan. 20th - 1906	2 men and car fare		4.40
" 23rd	3 men and car fare		6.60
Mar. 14th	5 " " " "		11.00
" 16th	4 " " " "		8.36
" 17th	4 " " " "		8.80
" 19th	7 " " " "		13.97
" 20th	1 man " " "		2.20
" 26th	9 men " " "		12.46
" 27th	6 " " " "		13.00
" 28th	6 " " " "		13.00
" 29th	4 " " " "		8.60
" 30th	2 " " " "		4.40
" 31st	1 man " " "		2.20
Apr. 2nd	1 " " " "		2.20
			$111.19

[illegible]

DEFENDANTS' EXHIBIT F.
(Continued)

Dec. 28th 1906	2 men and car fare		$2.40
Jan. 6th 1907,	3 " " " "		6.85
Mar. 18th "	1 man " " "		2.20
" 19th	1 " " " "		2.20
" 22nd	1 " " " "		2.20
" 24th	3 " " " "		6.75
" 26th	2 " " " "		4.90
" 27th	2 " " " "		4.90
" 28th	2 " " " "		4.90
" 29th	1 man " " "		2.45
" 30th	1 " " " "		2.45
Apr. 1st	1 " " " "		2.45
" 2nd	1 " " " "		2.45
" 3rd	1 " " " "		2.45
" 4th	1 " " " "		2.45
" 5th	1 " " " "		2.45
			$54.45

W. T. LEAKE.

W. T. LEAKE, previously sworn, being recalled by defendants, testified as follows:

DIRECT EXAMINATION.

Q You have already testified that you have been President of the San Antonio Water Company, since 1896: You resice in Ontario?

A Yes.

Q How long have you resided there?

A In Ontario? Continuously since 1894, and part of the time previous to that time since 1887.

Q When did you first begin to be acquainted with this section, where these waters in dispute are taken from the ground?

A I was not intimately acquainted with that section much before 1898; I visited the section several times during the previous six or eight years.

Q There has a well been referred to here as the Frankish well, which was put down somewhat earlier than that: When did you see that well first?

A In 1896.

Q What observation did you make? What what you observe in regard to it at that time when you saw it?

A I was on a committee of the San Antonio Water Company to look into the possibility of obtaining water from that well during that season; and I don't remember anything very definite, in regard to the physical character of the well at that time.

Q Do you know as to the quantity of water that it was producing?

A It was reported to me at different times as 25 inches or

W. T. Lack.

W. T. Lack, previously sworn, being examined by defendants, testified as follows:

DIRECT EXAMINATION.

Q. You have already testified that you have been President of the Tri Atlantic Trust Company, since 1900: for how long?

A. Yes.

Q. How long have you resided here?

A. In Jersey? Continuously since 1884, and part of the time previous to that time since 1867.

Q. Have you ever found water in connection with the property, where water which is identic and taken from the property?

A. I was not intimately acquainted with that property before 1887; I visited the premises several times during the previous six or eight years.

Q. There was a well then referred to here as the Dunkin well, which was put down somewhere between that time: how did you see that well then?

A. In 1884.

Q. What observation did you make? What did you observe in regard to it at that time when you saw it?

A. I saw in a conversation at the Tri Atlantic Trust Company in Jersey the possibility of obtaining water from that well during that season; and I don't remember anything more definite. In regard to the physical observation of the well at that time.

Q. Do you know as to the quantity or mean that it was producing?

about there; as I understand it, the well actually turned into our system in the colony about 25 inches; but there is some waste between the well, and the turning in of the water.

Q What arrangement did the Company make in regard to procuring that water from Frankish? Was it in writing or a verbal agreement?

A I think it was a verbal agreement at that time.

Q What was it?

A The agreement substantially was that our company had permission to pump the well during that irrigating season, that year.

Q And what was done in pursuance of that agreement?

A The well was pumped and the water ran into our system.

Q How long did that continue?

A Only during that irrigating season, as I remember it.

Q Did the company ever acquire any other rights in that well

A In 1898 the Company was given written permission from Frankish and Stamm to operate that well during that year, or during the irrigating season of that year.

Q Do you know what was done with the water of that well during the irrigating season of 1897?

Mr. Britt, Q That was a written permission as I understand.

A It was a written permission; yes, sir.

Q Have you the writing?

A I do not know that I could place the writing at the present time.

Mr. McKinley: We will make an effort to produce it,- to find it and produce it if we can.

Mr. Britt: Produce it if possible.

Mr. McKinley: Yes.

Mr. Mc.Kinley, Q Do you know what was done with the water of that well during the irrigating season of 1897?

A I don't remember what was done in 1897.

Q Now, in 1898 the water was taken by the San Antonio Water Company?

A Yes, sir.

Q And during what portion of the irrigating season?

A I don't remember during what portion of the irrigating season; my impression is we began to pump the well early, as soon as water was required for irrigating during that season. How long the pumping continued I don't remember.

Q Do you remember whether it continued during all of the irrigating season?

A My impression is that there was some difficulty with the machinery toward the latter part of the season; I don't think it ran the entire season.

Q Now, during the next irrigating season did the company have any connection with that well? That would be 1899?

A Yes, during 1899 we pumped the well continuously during the irrigating season; we obtained from the well at that time by engineers' measurements 30 inches of water.

Q Under what sort of an agreement was that?

A The well at that time, if I remember correctly, it came into our possession, the possession of the San Antonio Water Company.

Q By purchase?

A By foreclosure of a mortgage, and the buying in of property; I don't know that the mortgage was foreclosed; there was an arrangement whereby the property was purchased.

Mr. McIlroy, Q. Do you know what was done with the water of that well during the irrigating season of 1907?

A. I don't remember what was done in 1907.

Q. Now, in 1908 the water was taken by the Sun Antonio Water Company?

A. Yes, sir.

Q. And during that portion of the irrigating season?

A. I don't remember during what portion of the irrigating season; my impression is we began to pump the well early, as soon as water was required for irrigating during that season. How long the pumping continued I don't remember.

Q. Do you remember whether it continued during all of the irrigating season?

A. My impression is that there was some difficulty with the machinery towards the latter part of the season; I don't think it ran the entire season.

Q. Now, during the past irrigating season did the company have any connection with that well? That would be 1909?

A. Yes, during 1909 we pumped the well continuously during the irrigating season; we obtained from the well as that time by engineers' measurements 30 inches of water.

Q. Under what sort of an agreement was that?

A. The well at that time, if I remember correctly, it came into our possession, the possession of the San Antonio Water Company.

Q. By purchase?

A. By foreclosure of a mortgage, and the buying in of property; I don't know that the mortgage was foreclosed; there was an arrangement whereby the property was purchased.

Q And the deed I suppose would show what date that was?

A Yes, sir.

Q And since that what has been the history of that well?

A The well was deepened in 1900; a bored well was sunk from the center of the shaft and machinery installed, and the well has been in service ever since.

Q Since the deepening what amount of water have you been receiving,- varying amounts in different seasons?

A Varying amounts; we pump from that well as we need it; it has averaged as high as 100 inches of water at times; and at times we would not pump more than 60 inches; it would depend upon our needs and the general condition of our business.

Q Has that continued down to the present time?

A Yes, sir.

Q Now, the next water in which the San Antonio Water Company acquired an interest, at least a claim, was the Haskell well, was it?

A The Haskell wells, yes, sir; we purchased the Haskell well or a tract of land of 20 acres, including a well that had already been sunk to a depth of some 70 feet, a shaft; we continued the sinking of that shaft .

Q The deed I suppose will show the date you acquired that: you didn't go into possession until you got a deed?

A Nok sir.

Q Had you observed that well before, with reference to its production or anything of that sort, the Haskell well, any time before it was turned over to you?

A Yes, sir; we looked into the matter very carefully before we purchased.

Q Well, state all that you ascertained by the use of your own senses; not from others, hearsay, I mean, but what you observed yourself?

A We concluded that it was a water bearing well -

Q Not what you concluded but what did you see with regard to the well before you purchased it as to being pumped, or water flowing from it, or anything of that sort, if you observed anything there yourself?

A We observed the reservoir connected with the well, and indications that considerable water had at times been pumped from it; I saw no water being pumped from it; I observed there was water in the shaft; and upon that purchase - We made the purchase and proceeded to deepen the well.

Q Now, if you will go on with the history of that well, what you did and the amount of water you obtained and what use was made of it?

A We placed a pump in the well and pumped at first about from 12 to 20 inches, and sunk a shaft to a depth of some 80 or 90 feet, but found that the water did not accumulate rapidly, and we began the boring of a well in the shaft. We completed the boring of the well.

Q About when was that completed?

A Early in 1900.

Q When was it begun? Do you remember that,- the boring?

A It was begun I think about August, 1899. Early in 1900 we placed a pump in the well and shortly after begun pumping water into our system from that well.

Q Is that the first occasion when you received water into your system from that well?

Q. Well, since all this happened to you in the 1st of your life (sic); not long ago, Doctor, I mean, but before you observed your self?

A. We concluded that I was a major factor in it.

Q. Did this you analyzed for what did you do with regard to the cell before you constructed it as a basis, source, or which it was made from it, or anything of that sort, if you observed anything in your reality?

A. We observed the relation between the cell, the instrument and sensitivity (sic) as it came from the planet Iro; I was in some way impelled from it; I observed things we were in the cell; and then had problems - We made the pre-cause and problems in trying to use it.

Q. Now, if you will go on with the history of this cell, what you did and the reason of which you obtained and what was made of it?

A. We placed a part in the cell and proceed to find about from it in 20 centuries, and made a cell in Egypt of from 20 or 30 year, he found that the cells not consistis regularly, and we began the study-of , well in the cell. We complained the power of the cell.

Q. Where then was that complaint?

A. Early in 1900.

Q. How was it found in you research that, - the cause?

A. It was during I think about August, 1898. Early in 1900 we placed a part in the cell and discovered from pulsing which his or cylinder from the cell.

Q. In have the first-session when you received such a your problem from the cell?

A I am not sure about that.

Q How did you conduct water from the Haskell well over to Ontario?

A In a pipe line laid from the Haskell well, past the 16th street wells and on.

Q How was the water conducted from the Frankish well?

A In '98 and '99 it was conducted through an underground pipe In '96 it was conducted into our system through a wooden flume

Q What use didyou make of those waters conducted into your system?

A They mingled with the general supply of water for irrigatin purposes and were used in the colony for irrigation and domestic purposes.

Q All of the waters you had were used?

A Yes, sir.

Q Now, I interrupted you in the history of the Haskell well: You may proceed with that?

A The waters of that well were simply turned into our system We found it to be an excellent well pumping over 100 inches of water at that time, and we continued the use of that well up to our needs and requirements continuously up to the present time.

Q Now, did you put down another well on that Haskell propert
A No; we placed another well on that isncalled the Keller property immediately north of the Haskell property; the well placed there is about between one and two hundred feet distant
Q It is the well referred to as the second Haskell well, but in fact it is on another property?
A Yes, sir.
Q When was that work done?
A That work was done immediately after the completion of Haskell No. 1, or No. 7 on the present maps. That was followed to completion and a pump installed and about 100 inches of water pumped from that well.

A. I'm just sure glad.

Q. How much pure drinking water from the Tunnell well would equal a barrel?

A. In a year like 1947 from the Tunnell well, pure like little stream water and so.

Q. Did you the water contains iron or iron salts?

A. No. The 'Ph' is our principal trouble as indicated.

Q. Did it ever occurred to you or other people around a wooden flume Q. This was simply well-at flow water analysis and pure water?

A. They thought of it. The general policy of taking the industrial properties has been to the water for industrial and domestic purposes.

Q. All of the events you had here today?

A. Yes, sir.

Q. Yes, I interrupted you in the history of the Tunnell well: You was pumping with that.

A. The water of that well were slightly turned into our system. We found it to be so excessive well pumping 120 inches of water as that flow, and we considered the use of that well as our needs and requirements minimum so in the present time.

Q. Now, did you have some earlier well on that Tunnell you are speaking of?

A. Yes, we drilled another well on that property of the Ballard property. Subsequently acquired the Ballard property, the well phone there is quite various from one and the Ballard well system.

Q. Is the old well activity on the Tunnell well, the Ballard well, is it in service?

A. Yes, sir.

Q. Also the Ball well?

A. Yes, sir.

Q. Did you ever use the immediately after the acquisition of Tunnell, Ballard, or the Fredericksburg? Did you ever use the facilities of pumping in point water from the well.

Q When did you begin pumping from that well?

A In the summer of 1900.

Q That was conducted through the same pipe line?

A Yes, sir.

Q And the water applied to the same uses?

A Yes, sir.

Q What was the next water acquired?

A We continued putting down wells along the line of 16th Street. If you will allow me to consult my memorandum I can give you about the dates.

Q All right.

A According to my memorandum the Haskell well no. 1 or 7, as it is at present, was completed in December, 1899. Haskell well no. 2 or no. 8, as at present stated, was completed by September 1900. The original 16th Street well was deepened and completed in 1900 in May.

Q That is the same well that you described as the Frankish well?

A Yes, sir. A nd 16th Street well no. 2 was completed in November, 1900.

Q What amount of water did that produce?

A About 75 inches, more or less, as we chose to pump . Ta The west 16th street well or 16th street well no. 1, under the present designation, was completed in August, 1901.

Q What amount of water did you produce from that?

A About 75 inches. 16th Street well no. 4 was completed in December, 1901.

Q And what did that produce?

A From 60 to 80 inches.

Q. Has the pump been pumping from this well?

A. No, not since 1900.

Q. Did you measure the water in your pump lately?

A. Yes, sir.

Q. And the water appears to be some more?

A. Yes, sir.

Q. Did you ever water anything?

A. We never used pumping the water along the line of the street. If you will allow me to explain I can give you more the reason.

Q. All right.

A. According to my memory the Dunkirk well no. 1 was drilled in September 1900, the Dunkirk well no. 2 was drilled in December, 1900. Dunkirk well no. 3 was drilled in January, 1901. The water plated by September 1900. The original Dunkirk water well was dropped and abandoned in 1900 or 1901.

Q. That hole was well that you described as the Dunkirk well?

A. Yes, sir. A 24 inch stone well no. 2 was completed in December, 1900.

Q. That source of water did not supply?

A. Much to large, more or less, we so close to pump. The most this stone well is 1400 square well no. 1, under the Dunkirk Distillery, was completed in August, 1900.

Q. That source of water is the central fire hydrant?

A. Much to large. This stone well no. 4 was completed in October, 1901.

Q. Another well was pumped?

A. There is no other.

Q Now after those wells were completed and they produced that amount, when did you begin using the water from them?

A There was one more well. 16th Street well no. 5 was completed April 1902. We equipped those wells with the proper machinery and began pumping them according to our needs, dependent upon the character of the seasons.

Q And the waters were used in the next irrigation season after they were completed, I suppose?

A Yes, sir.

Q Have you continued so to do from that time to this?

A Up to our necessities. We have used those waters as our necessities required up to this time.

Q How has that been as to using approximately the waters that the wells produced?

Mr. Britt: If there is better evidence obtainable(I believe it has appeared that part of the time the water taken from those wells was registered and a record kept with a degree of accuracy) I believe it would be more informing if we had the record.

Mr. McKinley: The Court might think that was better evidence when it is passing on it; but as far as evidence is concerned, one is as good as the other. Exact measurements are not any better than a man's statement, as a matter of law. As a matter of consideration, of course, the Court would give preference to the other.

The Court: I don't think the rule covers evidence of this character. The objection is overruled. Plaintiffs except.

A There have been times and seasons when we did not need all the water those wells have produced, and there have been seas-

ons when we needed to draw largely from those wells. We have drawn from them as our necessities require.

Q What made thevariation in your necessities?

A The rainfall principally; the yearly rainfall.

Q Passing on to theother developments in that region, there is the Rubio well: When did you acquire that property?

A We acquired that property in the early summer of 1902. At least, I purchased it with the idea of turning over to the San Antonio Water Company as soon as convenient the water rights of that region, and selling to other parties the surface ground for orchard purposes.

Q Not as a speculation of your own, but as representing the San Antonio Water Company and for its benefit?

A That is correct.

Q Was there a well on that Rubio property?

A Yes, sir.

Q Do you know anything about what had been done with it prior to your purchase?

A I have seen it pumped under Mr. Rubio's direction for the use of the land and the irrigation of the trees on that 40-acre tract.

Q About what was its production when you first became acquainted with it?

A About 20 to 25 inches.

Q What was its subsequent history?

A When it came under my title deeds the water was pumped for irrigation purposes up to the necessities of the ranch; probably 8 inches or more continuous flow, giving something like an inch to 5 acres on theranch or a trifle more. The

question as to whether the San Antonio Water Company ever pumped for the benefit of the San Antonio Water Company, turning the stream into their general output, is a matter that I have not been able to trace. My recollection is extremely hazy on the subject, and I have stated upon the stand that I had no recollection that it had been so done. I don't have any distinct recollection at the present time, although it is possible that at some time it may have for a very limited time been turned into the San Antonio Water Company.

Q Now then, passing from that to the waters purchased from Stowell and the Cucamonga Fruit Land Company under the agreement that has been introduced here, when did you first become acquainted with the wells the waters of which are described in that agreement?

A Early in 1899.

Q What observation of them did you make at that time?

A I visited those lands and observed the well called the '96 well, and went over the whole situation.

Q What did you see with reference to the ~~purchase~~ production of those wells at that time?

A The '96 well seemed to be flowing a good stream of water. In fact, it looked to me like a very promising field for water development.

Q Did you see what was being done with that water at that time?

A No; it apparently was flowing into a tunnel, but my recollection- -

Q You didn't yourself know what use was being made of it, or at least, you don't remember? Was it in the irrigating

season or in the wintet that you saw it?

A My impre sion is that it was in the winter or early in the spring.

Q Then subsequently you saw it again before the purchase? I will put that in another form. Did the San Antonio Water Company have the use of any of the waters of that well or the Stowell developments prior to that purchase?

A Yes; we rented water from Mr. Stowell prior to the purchase.

Q What water was that?

A Water that came from that development, I pr sume. I understood so.

Mr. Britt: That ism objected to.

Mr. McKinley: I will see if I can make it clear. If not, it may be stricken out. Do you know where that water was delivered to you?

A It was delivered through the Eadie tunnel.

Q But you don't know how it went into the Eadie tunnel? Is that the part that you depend on your understanding for?

Mr. Britt: First, was there a written lease from Stowell to the company of that water?

A I am not sure about that.

Mr. McKinley: Q You mean you are not sure that there was a written lease?

A Yes, sir.

Mr. McKinley. I am willing that the statement that he understood so be stricken out.

The Court: Stricken out.

Q The water that you leased was delivered to you through the

reason or is you reason that you have lost?

A. My depression is such it has as the amount of energy in the spring.

Q. Then subsequently you did it again before the government I will put back to another time. Did you see Detective Tyler Cheney here in the courtroom on the morning of this trial in the council chamber during the pendency of this proceeding?

A. They so really never like the Cheney guys in the pressure.

Q. Did anyone see that?

A. Other than your Honor this was a telephone, I guess. I mentioned it.

MR. DRILLIN: Thank you, Judge.

MR. MARTINEZ: I only one of I can come in alone. If not, it may be another one. Do you have other cases which we initiated in jail?

A. It was different through the Delta County.

Q. But you don't know how it was. Did the Delta County in that the part that you dealt on your understanding for?

MR. DRILLIN: Move, Your Honor a written Jones Time Sheets in the process of this motion?

A. I am not sure about that.

MR. MARTINEZ: Q. You know you are not sure that there was a written time?

A. Yes, sir.

Q. MARTINEZ: I'm asking that the statement that be understood to be written one.

The Court: Sustained.

Q. The motion that you have not filed to see Jones Sheets

Eadie tunnel?

A Yes.

Q But you don't know of your own knowledge how it got into the Eadie tunnel?

A It evidently came in from these wells and the development into the head of the Eady tunnel.

Mr. Britt: We ask that the statement as to where it evidently came from be stricken out as a conclusion of the witness.

Mr. McKinley: I don't care; it may as well be stricken out. I think Mr. Stowell testified where it came from.

The Court: Stricken out.

Q Now, Mr. Leeke, you had that water during the summer of 1899 as I understand it?

A Yes, sir-- 1898.

Q 1898. Do you know whether anybody else was receiving water from the same sources at that time coming out of the Eadie tunnel?

A Not from my own observation.

Q Did the San Antonio Water Company conduct any pumping plant on that Stowell property that year-- on the 90-acre tract-- in 1898?

A I think it was in 1899 they conducted a pumping plant.

Q Can you ascertain in regard to that date?

A I will.

Q That 30 inches was used during all the irrigating season?

A Yes, sir.

Q You are familiar with the raising of citrus fruits and irrigation and were during all these years?

A Yes, sir.

Delta Gamma?

A. Yes.

Q. Did you do it some or your own knowledge how it got into the Delta Gamma?

A. It actually came in from Alpha Delta and the Delta Gamma girls who lived at the house.

Mr. Brill: We ask that the statement be stricken as being entirely from the witness's own or a conclusion of the witness.

Mr. Whitney: I don't know; if they is well to strike out. I think the witness answer is some from.

The Court: Overruled.

Q. Now, Mr. Lewis, you had that water during the winter of 1929 or 1930 or 1931?

A. The winter 1929.

Q. 1929. Do you have occasion personally also use receiving water from the same source at that time during you at the Delta Gamma?

A. Not during my own knowledge.

Q. Yes. Did the witness Mary Jennings complain to you that water had actually caused a bad odor and taste in the Chemical Lab in 1929?

A. I think it was in 1929 they installed a purifying plant.

Q. Did you attribute the cause of that odor?

A. Yes.

Q. That is before you had driven all the Delta Gamma?

A. Yes, sir.

Q. You are familiar with the relative of odors fresh and stagnant, and does that odor of that water resemble?

A. Yes, sir.

Q Will you state what is the irrigating season, Mr. Locke, and also how it varies and for what reasons?

A The length of the irrigating seasons depends on the rainfall. There are some years when the irrigating season extends practically through the winter there. There are other years when it extends from March to quite late in the fall. It simply is circumscribed by the rainfall-- early or late-- or winterrainfall.

Q Now with reference to this water of these Stowell developments covered by this contract-- that contract is shown to have been made in 1899-- when did you first receive water under that contract?

A Very early in the year. Very soon after the contract was completed. There was a very great desire to see that water as soon as possible on account of the extreme necessities of our groves.

Q How was it given to you at that time? That is, how was it delivered to you?

A It was delivered to us through a pipe at about a half a mile from the mouth of the Ladie tunnel, west to the border of the Ontario Colony lands,-- the eastern border.

Q Who constructed that pipe line?

A Up to that point it was constructed by Mr. Stowell or the Fruit Land Company as part of the contract that the pipe line should be constructed from that point. The San Antonio Water Company constructed the pipe line through the uncultivated lands over to what is now the city of Uplands.

Q You saw the pipe line constructed?

A I saw it in process of construction; yes.

Q. Tell you what is that in the twilight zone, Mr. Smith, and also how it varies and for what reasons?

A. The length of the twilight zones depends on the rainfall. There are some years when the twilight zones actually practically reached the water there. There are other years when it extends from there to quite late in the fall. Generally it diminishes by the middle-early or later- or mid-November.

Q. Now this reference to this main of some fresh-water springs forced in this vicinity-- that contrast is stone is been made in 1929-- when did you first observe water under that condition?

A. Very early in the year. Very soon after the contract was completed. There was a very great change in the fresh water zone so it resulted in several of the natural springs of the river.

Q. How was it given to you at that time? That is, how was it delivered to you?

A. It was delivered to us through a pipe at about a half a mile from the mouth of the Jones tunnel, out in the vicinity of the Ontario Spring Lake,-- the existing water.

Q. Was anything unusual about that?

A. Up to that point it was constructed by Mr. Howell or the Pacific Land Company as part of the contract that the pipe line should be constructed free and clear. The San Antonio Water Company constructed the pipe line through the existing lands used to reach the mouth of Ontario.

Q. You saw the pipe line constructed?

A. I was in the process of construction; yes.

Q. Describe generally what its appearance were as the work went on with reference to its being concealed or open to the public gaze.

A. It was open to public inspection and no attempt at concealment; an absolutely open and free proposition, and quite near the main traveled road between Ontario and Upland and the City of San Bernardino,-- only a few hundred feet from the road.

Q. And that pipe line conducted the water from the mouth of the Radie tunnel?

A. Yes, sir.

Q. How was the water gotten into the Radie tunnel from the well?

A. The Radie tunnel was extended or had been extended up to the wells or very near to them and the water was simply allowed to run into the tunnel.

Q. Put into a shaft? Was there a shaft connected with the tunnel?

A. There was a shaft there, I think. I never looked into that matter very closely.

Q. Didn't you say there was a series of shafts?

A. At that time I will say there was a shaft.

Q. What amount of water did the San Antonio Water Company receive that summer from that source, approximately?

A. Somewhere from 80 to 100 inches.

Q. How has it been in subsequent seasons? The same or less or an increased amount?

A. It was increased as the developments proceeded at the head of the tunnel. The water increased until the volume

became 130 inches or more.

Q By what time had it become 130 inches?

A Without reference to the records or measurements I cannot state that.

Q And have those waters been received continuously since that time by your company?

A Yes, sir.

Q What use has been made of them?

A They have been used in irrigating the orchards of the Ontario colony and for the domestic supply of the city of Ontario, and outlying ranches.

Q You are, I believe, also manager of the Ontario Power Company?

A Yes, sir.

Q How long have you been manager of that company?

A Since May, 1902.

Q Will you state, Mr. Leeke, what waters the Ontario Power Company has been taking from that locality and how they acquired them?

A I am not very familiar with the work of the Ontario Power Company previous to May 12, 1902.

Q That is the time at which you became general manager?

A Yes, sir.

Q And at that time the San Antonio Water Company bought the stock of the Ontario Power Company?

A A few days previous to that.

Q What waters did they have in their possession at that time?

A They had in their possession the deed to the Eadie tun-

Lorine Lil Cosmo-et-Sarr.

Q. By what line did it become lil?

A. Without reference to the Trents or Montgomery I remain quite dull.

Q. Has Lord Glen Gallow been positive confidency since that line by your [illegible]?

A. Yes, sir.

Q. Did-you see Lord Glen-Gallow at Lord

A. They were-then-down to investigate the estate of the Gallows estate and for the company hoping if he was any of Ontario, not studying medicine.

Q. You are, I believe, also member of the Ontario Law Society?

A. Yes, sir.

Q. How long have you been member of that Company?

A. Since May, 1903.

Q. Will you please, Dr. Lowry, what course the Ontario Law-Society has been taking for the last twenty and the last twelve years?

A. I am a very familiar with as well as the Ontario Law-or Society prior to May 12, 1903.

Q. Have it the line or date you began general [illegible]?

A. Yes, sir.

Q. Did at that time in the Ontario Law Society [illegible] in which at the Ontario Law Society?

A. A-Law Society prior to 1903.

Q. Does which did they have in their possession at that time?

A. They had in their possession the seal in the Ontario Law-

nel and the right of way over the surface, with the exception of the right of way held by the San Antonio Water Company for 130 inches of water.

Mr. McKinley: We will introduce those deeds. I am not seeking to show the title now.

A And the right of the Cucamonga Water Company to use the tunnel up to one-half of its capacity.

Q Proceed.

A A ndwell no. 14 on the exhibit here, within about 80 feet of the upper end of the Eadie tunnel, which was at that time being connected with a gallery by a contractor under contract with the Power Company-- connected with a gallery to the end of the Eadie tunnel.

Q Will you point that well out here?

A This is it.

Q It is the well marked as well no. 9 on defendants' exhibit "E"?

Mr. Stevens: That is the same as our well no. 14?

Mr. McKinley: Yes; he called it 14, but on our exhibit it is marked 9.

A This gallery was rapidly completed and the water was conducted through it from well no. 9 into the end of the Eadie tunnel a very short time after I became manager of the Power Company. A siphon was placed in this gallery and the water to the extent of 150 inches or more was turned through this siphon and turned into the Eadie tunnel.

Q And then carried on from that through the tunnel and through the pipelines to our orange groves.

Q What pipe lines was that carried through?

[illegible]

Q. Will you point that well out here?

A. That is it.

Q. Is it the [illegible] or will so. Q Do [illegible] exists?

Mr. Atkinson: That is [illegible] marked Exh. 12?

Mr. Dobbins: Yes; it [illegible] 12, but we [illegible] it marked 6.

A. [illegible] Mr. Dobbins [illegible] Mr. Atkinson [illegible] Dobbins [illegible] a very [illegible] the river Tennessee. A [illegible] the [illegible] and the [illegible] of the [illegible] of [illegible] the Israel [illegible] and [illegible] for the Dobbs [illegible].

Q Are [illegible] Tennessee River [illegible] the [illegible] the [illegible] to [illegible] [illegible].

Q. Well [illegible] [illegible] marked [illegible]?

A That was carried in the early part of the season through the pipeline that was originally laid for the 130 inches of water previously purchased by the San Antonio Water Company, with the exception of 60 inches. There was 60 inches of that water that had been previously contracted for by the Cucamonga Water Company, and during that season those 60 inches were turned over under contract for certain remuneration to the Cucamonga Water Company. The remainder of that water was turned in and conducted along with the 130 inches of the San Antonio Water Company to the colony of Ontario.

Q Do you know what was done with that water by the Cucamonga Water Company?

A I can't say directly. I presume that I know pretty well; but not having looked into the matter I don't know as I am competent to be a witness.

Mr. Britt: For my own information, may I interject a question?

Mr. McKinley: Yes; I have no objection.

Mr. Britt: Q 60 inches of what water? From this new well?

A Pumped from this new well; yes, sir.

Q No. 14 or 9?

A No. 9.

Mr. McKinley: (Resuming) How much water did the San Antonio Water Company receive that season? Or, rather, the Ontario Power Company?

A The Ontario Power Company received, I presume, about 100 inches of that water.

Q Now that was during the season of 1902?

A Yes, sir.

A. That was started in the early part of the nineteenth century, when population was originally laid out on the grid across a water particularly considerably in the Potomac River Company, with the exception of 40 lumber. There was 40 lumber at the water that had been previously constructed for by the Potomac River Company, and during that season there 20 boats were burned over-night. Authority for repairs (commercial) in the Potomac River Company. The president of that motor was burned in and constructed along with the 18th lumber of the Jim Lumber River Company in the middle of August.

Q. Please tell us what was done with that prior to the formation Water Company?

A. I don't see clearly. I presume that I have proof; but was burned based like the matter I don't have a lumber presumably to be a fire.

Mr. Grant: For the information, may I interpose a question?

Mr. Robinson: Yes; I have no objection.

Mr. Grant: Q. Do you know of a so called free water well? A. Pumped from this our well; yes, sir.

Q. Mr. 14 or 15?

A. No. 8.

Mr. Robinson: Shortly the well water did the Potomac River Water Company water assessed to, assess, was income lower income?

A. The Potomac River Company existed, I presume, about 1870 prior to that water.

Q. Do you know anything about 1870?

A. Yes, sir.

Q Now you say it was carried for a time in the pipeline--

A Of the San Antonio Water Company.

Q -- The pipe line for the 130 inches?

A Yes, sir.

Q What disposition was subsequently made of it or in what way was it subsequently carried?

A The Ontario Power Company began the construction of a new pipe line to connect with the Eadie tunnel, and it was pushed to completion, the pipeline exte ding from the Eadie tunnel over past the box at the east boundary of the Ontario colony lands, through to what is now Upland, and there distributed through several mains and put into a general distributing box-- put into several mains into the general distributing system of the San Antonio Water Company.

Q Under what arrangement? It was delivered to the San Antonio Water Company by the Ontario Power Company?

A At least the major part of it was delivered by the Ontario Power Company to the San Antonio Water Company.

Q Under what sort of an agreement?

A Under an agreement that the Ontario Power Company should pay--

Q Was that a written agreement?

A I think it was simply by resolution. A t last, it has been carried out from that day to this.

Q By resolution of each of the companies?

A I am not sure about that.

Q You will look that up. That was during the season of 1900, as far as the 100 inches was concerned?

A 1902.

Q Yes; that is what I meant. In the subsequent seasons what amount of water was received from that source approximately?

A I am trying to recall the engineer's measurement. I can only give a general statement. The product of that well and that water bearing land belonging to the Ontario Power Company afforded about 150 inches of water.

Q When you say the well and the water bearing land I understand you to mean the water that came in there was part of it from the well and part of it from the extension of the tunnel and the galleries, and it is all measured together and you are not able to separate them?

A Yes, sir.

Q What use has been made of that water by the San Antonio Water Company?

A It is conducted through its pipes to the stockholders of the San Antonio Water Company and they have used it on their groves and for domestic purposes in Ontario and Uplands.

Q In what business was the Ontario Power Company engaged prior to thepurchase of the stock by the San Antonio Water Company?

A Some preliminary work in San Antonio Canyon in the way of establishing a power plant, extending the Radie tunnel to the north. The contract for it which afterwards came into our possession indicated that it was a part of their plans to run that tunnel up as far as 16th Street.

Q What business has the company carried on since that time?

A Since I became manager of the company we have completed the development of the water at well no. 9 and have established a power plant in San Antonio Canyon whereby we supply the citizens of Ontario with light and power.

Q And what have you done in the way of distribution of water?

A We leased the right from the San Antonio Water Company to pass a certain amount of water through their pipe lines and immediately begun the distribution of domestic water to parties in the colony not connected with the domestic system of Uplands and Ontario. I mean the domestic distribution systems.

Q The business of this company is carried on by the sale of and distribution of electric power and the water for domestic purposes?

A Yes, sir; and also the rental of water to the San Antonio Water Company

Q There is no division of water or power among the stock holders of this company?

A None whatever. It is placed on a commercial basis.

Q To how large a number of persons do you supply domestic water?

A I can't give you a very definite answer as to that, but I presume about 300.

Q Has the number of persons taking domestic water been increasing since you ~~gainedx~~ began business?

A That answer was not persons but families.

Q Has the number of families been increasing?

A Yes.

Q How long have you been carrying on that business?

A Since 1902.

Q And over what territory are those families scattered?

A They are scattered over the colony outside of the thick-

Q. And what does you do in the way of distributing of money?

A. We issued its right from the same a month later Company to open a district branch of which Jerome Smith plays. Since and immediately began the distribution of Somalia money in payment in our salary day, accompanied with the Somalia system of checks and Orders. I mean the Somalia distribution system.

Q. The business of this company is carried on by the sale of and distribution of electric power and lighting to the Somalia purposes?

A. Yes, sir, and also the rental of water in the Ben Ghazi Water Supply.

Q. There is no distribution of water or power through the pipes mentioned in this company?

A. Pipes everywhere. It is placed on a long period. Again.

Q. To how large a number of persons do you supply Somalia water?

A. I really give a very definite answer as to that, but I guesses about 200.

Q. Do the people receiving Italian Somalia water have increasing since you started in business?

A. That water was not provided in the facilities.

Q. Has the number of facilities been increased?

A. Yes.

Q. How long have you been carrying on this business?

A. Since 1940.

Q. Not over that. Anything you know Italian Somalia business?

A. They are familiar with the money values of the Italo-

ly settled portions of Upland and Ontario,-- outside of the towns themselves.

Q Outside of the corporate limits?

A Not outside of the corporate limits. The corporate limits take in the whole thing. It is simply a thickly settled portion of the corporations.

Q In other words, I suppose where the plants of the municipalities of Upland and Ontario do not extend? Is that right?

A Yes, sir; that is right. There are one or two little side companies that cover some territory, but not much.

Q How is the business of the Ontario Power Company carried on as to being connected in any way with the carrying on of the business of the San Antonio Water Company?

Mr. Britt: Give us facts and not mere opinions.

Q That is what I am asking for.

A The Ontario Power Company is carried on distinctly separate from the business of the San Antonio Water Company.

Mr. Britt: I ask that the answer be stricken out as not responsive to the question. The question was as to how the business was carried on.

The Court: I suppose he is in a position to know the fact.

Mr. Britt: I think thequestion called for a statement of the manner in which the business of these two companies is transacted-- how it is carried on.

Mr. McKinley: I am going on into thedetails of that and if I do not counsel doubtless would on cross examination.

Mr. Britt: It is one of the ultimate facts raised by the pleadings, upon which the Court will respond.

The Court: I don't see that you are prejudiced. Cross examination undoubtedly will develop the true situation.

Recess until to-morrow, March 5, at 10 o'clock a. m.

J. M. McKinley.

IN THE

Superior Court

OF THE

County of San Bernardino

State of California

Cucamonga Vineyard Co. et al.,

Plaintiff

vs.

San Antonio Water Co. et al.,

Defendant

Vol. 24.

Friday, March 5, 1909.

I. BENJAMIN, Official Reporter

Friday, March 5th, 1909. Twenty-fourth Day.

Mr. Jolliffe: Defendants offer in evidence a deed from Peter Nelson to W. T. Leeke, dated September 8th, 1902, recorded in Book 312 of Deeds, at page 219.

Deed, W. T. Leeke, to San Antonio Water Company, dated May 24th, 1906, recorded in Book 375 of Deeds, at page 152.

Deed, From Andrew Rubio to Peter Nelson, dated May 1st, 1902, recorded in Book 311 of Deeds, at page 365.

Deed, from Max Meyberg and others, trmustees under the decree of distribution of the estate of I.W.Hellman, deceased, to Andrew Rubio, dated February 8th, 1897, recorded in Book 234 of Deeds, at page 395.

Decree of distribution in the estate of I.W.Hellman, deceased, dated May 6th, 1895, recorded in Book 211 of Deeds, at page 417.

(Copies or abstracts of documents here offered, and of those offered yesterday, from the records of the County, will be found at the end of this day's testimony.)

Mr. McKinley: When plaintiffs rested, we assumed that the intervenors did, but on examining the record we don't find any record of the fact that the intervenors rested, and we have no recollection that they did. I would like to understand if they have rested or not. There was no statement

in regard to it. We assumed that they did.

Mr. Haskell: The intervenors rest, but it has been so long since the trial was had before, that I am going over the record. If I find that there is anything --

Mr. McKinley: We have no objection to your introducing anything else that you desire.

The Court: That is, you rest for the time being.

Mr. Haskell: Yes; if I find anything that I have omitted, I want to re-open the case.

Mr. McKinley: We have no objection

Mr. Jolliffe: In other words, you rest till you get rest - ed.

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S. G. COUSINS.

S. G. Cousins, heretofore sworn and examined, being re-called by defendants, testified as follows:

Direct Examination.

Mr. McKinley: Q You testified that you had charge of the sinking of the Sunset well?

A Yes, sir.

Q Did you keep any log of that?

A Yes, sir.

Q Have you got that?

A I think I have.

Q That was sunk in 1905, did you state?

A Yes, sir.

Q Will you give the log?

A Station 0, as I have it copied in my book --

Mr. Britt: Would there be any objection to your witness

locating the well first?

Mr. McKinley: Not at all. I thought it had been located.

A On this plaintiffs' exhibit 77, it is marked by a circle, and Sunset well No. 2, elevation of ground 1394, and situated in the southerly portion of Lot 4, Block 8, Cucamonga Homestead Association.

Q How far is that from the "Y" tunnel, Mr. Cousins?

A Three-quarters of a mile to a mile.

Q Can you come nearer than that by the subdivisions there? You are an engineer.

A It is a mile, approximately.

Q And how far from the springs that have been referred to as the Cucamonga Springs on the east side?

A About a mile and a quarter, possibly a little less.

Mr. Haskell: I would suggest that the record would be a little simpler if one map was used as far as possible in locating wells.

Mr. McKinley: Yes, that is true. It is shown also on the other map -- No, it is not on that map, but I think that is sufficient. We all know approximately where it is, at least I do.

Q Will you give the log of the well?

A Station 0 is the top of the ground. Station 0, to the top -- I don't know what that refers to, whether it is the top of the shaft or not -- Station 0 to 5, which is 5 feet, is --

The Court: I wish you would give us the facts and not be tied down by your book, which is only a memorandum. If you make a statement, using the memorandum to refresh your

memory, we will understand it better.

Q Just make your statement as to what you found in going down, using your log as a memorandum.

A Commencing at the top, or surface, whatever it is, and for 5 feet I have surface soil.

Thence 7 feet of gravel.

Thence 34 feet of gravel -- this is rather unexpected to me. I didn't know what was wanted. I will have to commence that over again.

Commencing at the top, there is 5 feet of surface soil;

From 5 feet to 7 feet in depth is gravel;

Mr. Britt: Q That is, 2 feet of gravel?

A Yes.

From 7 feet in depth to 20 feet in depth is sediment.

From 20 feet in depth to 34 feet in depth, is gravel;

From 34 feet in depth to 50 feet, clay;

50 feet to 60 feet in depth is gravel;

60 feet to 92 feet is clay;

92 feet to 112 feet is gravel. At that point the water appears.

Q Do you know how much water you got there, -- whether there was much or little?

A That is where it just showed.

112 feet to 140 is clay;

140 to 170 is sand and gravel;

170 to 206 is cement and boulders;

206 to 238 is dirty sand and clay;

237 to 264, cement and boulders;

264 to 268, clay;

288 to 298, cemented gravel;

298 to 305, water gravel;

305 to 320, gravel. And at this point, there was some extra water appeared. There was a slight raise in the well while they were drilling.

Q Is that the first appearance of additional water to what you spoke of before?

A Yes, sir.

320 to 330, water gravel;

Q What quantities of water did you find then?

A We didn't know. We didn't pump it till after the well was completed.

Q Was it a considerable quantity?

A There was a slight raise, but we didn't measure it. It was just noticeable.

330 to 348 is clay and sand;

348 to 375 is clay;

375 to 387, gravel and boulders and fine sand;

387 to 400, fine sand;

400 to 450 is clay and sand;

450 to 546 is hard clay. And that is the end. That is the bottom of the well.

Mr. Britt: Q 546 feet is the total depth?

A 546 feet.

Mr. McKinley: Q Did the water rise any in that well?

A Not to speak of, only at that point that I mentioned here, there was a slight raise.

Q When you began pumping it, how much water did it produce?

A We pumped about 40 inches for about 2 hours, and there-

after we pumped 26 hours, for the time being, and possibly two weeks. After that it was dropped to the neighborhood of 20 inches, or 22 or 23 inches.

Q What time of the year was it that you began pumping it?

A Some time in July, 1905.

Q Have you the log of the other well?

A Yes; I have a copy of it.

Q Who kept that?

A Mr. Stinchfield.

Mr. McKinley: Have you any objection to that?

Mr. Britt: Do you know it to be authentic?

A I couldn't swear to it positively.

Mr. McKinley: We will examine Mr. Stinchfield.

Mr. Britt: If this witness is morally certain --

A I don't think there is any question about it.

Mr. Britt: If he is morally certain that it is correct, it may go in. Have you any reason to mistrust the correctness of the log as you have it copied there?

A No, sir.

Q All right, go ahead. First state where it is situated.

Mr. McKinley: Q Yes, locate it on the map.

A On this plaintiffs' exhibit 77, it is located in the north-west corner of Lot 5, Block 8, Cucamonga Homestead Association, and indicated by a circle marked "Sunset Well No. 1, elevation of ground 1391; May 11, 1906, elevation of water 1300."

Q What distance is it from the other well?

A About 7 or 8 hundred feet.

Q Proceed, and give that log.

A 0 feet to 30 feet, surface soil. That is the tunnel level. 110 is the shaft depth.

110 to 182, gravel;

182 to 212, clay;

212 to 328, clay and gravel;

328 to 372, clay;

372 to 508, clay, and as I have it here, it is intercepted with 4 feet of sand and 6 feet of sand and gravel. Just at what points those are, I don't know. The notes don't show it.

508 to 640, is clay;

640 to 652 is gravel;

652 to 712, clay;

712 to 722, sand and gravel;

722 to 782 is hard clay;

782 to 788, gravel;

788 to 831, hard clay;

831 to 842, gravel;

842 to 856, good gravel. 9 feet raise of water in the well.

856 to 864 is very hard clay;

864 to 868 feet 10 inches, hard clay.

Q That is all, is it?

A Yes, sir.

Q You were supervising the pumping of both of these wells during the summer of 1955?

A Yes, sir.

Q What amount of water was produced from the first well, the one of which you have just given the log?

A In the neighborhood of 30 inches.

Q Was that running about the same all through the season?

A Yes, sir.

Q Did you notice any effect on the one well by the pumping of the other?

A We started the well No. 1 some time previous to well No. 2, and after the pump had been operated a week, possibly, we noticed the water lowering slightly in well No.2; and after the pump was installed -- when the pump head was put in the bottom of the shaft, and the shaft was sunk to the water level, it was covered up, and I don't know what the effect of it was afterwards.

CROSS EXAMINATION.

Mr. Britt: Q When was the well No. 2, the first one of which you gave the log, sunk? It wa s pumped first in July 1905. When was it drilled?

A It was drilled in the early part of that year, or the latter part of the year before. Immediately the drilling was completed, we went to work to install the machinery and complete the well.

Q You pumped it, then, very soon after it was completed to the full depth of 546 feet?

A Yes, sir.

Q So that well was completed some time in the early summer of 1905?

A Yes, sir.

Q When was No. 2 completed -- the drilling -- No.1?

A I couldn't state that because I don't know personally. It was some two or three years previous.

Q What was the diameter of the two wells?

A It was started with a 15-inch casing and reduced to 12 at No. 2.

Q Do you know anything about the water pumped from these two wells last year-- 1908-- as to quantity?

A The sum total of the two wells was in the neighborhood of 52 inches.

Q Was that measured by yourself?

A I remember making a measurement at one time.

Q When? [illegible]

A I don't know; it was some time during the summer.

Q Last summer, 1908.?

A Yes, sir.

Q Do you know what length of time they were operated?

A They began operations the last of May and continued last year until the latter part of November.

Q Do you know whether they operated all the time?

A Continuously, except in case of breakdown.

Q Day and night?

A Day and night, continuously.

Q And what time was it that you made your measurement? How long had it been operating when you made your measurement of 52 inches?

A I think, possibly, it was two months. I didn't make any note of it.

Q Now, theprevious year, 1907, did you make any measurement of the water of those two wells?

A Yes, I did, several times, but I can't remember the times.

Q Was it during the irrigating season after they had been pumped quite a while?

A. It was a [illegible] [illegible] [illegible]

A Yes, sir.

Q How was the quantity produced then compared to what you had in 1908.?

A At times it was about 80 inches, and in the latter part of the season it was not quite so much, and it ran down to about 50 inches.

Q In 1906 did you make any measurement of the water of those wells during the irrigating or pumping season?

A That is pretty well back; I don't remember, but probably I did. I have no doubt I did. The quantity of water was about the same.

Q You say you don't know when well No. 1 was sunk?

A Only by hearsay.

Q When was it that you observed that after pumping well No. 1 a while that well No. 2 showed a lowering of the water? In what season?

A That was in 1905.

Q What time in the year?

A It was just before we commenced pumping well No. 2. While we were putting in machinery in well no. 2.

Q That was probably about June, then, 1905?

A Yes, sir.

Q At what depth did the water stand normally when unpumped in well no. 1-- the depth below the surface?

A From 90 to 92 feet.

Q That is, in well no. 1?

A Yes, sir.

Q 92 feet below the surface of the ground?

A Yes, sir; from the top of the curbing which was about a

foot above the top of the ground.

Q And what was the depth from the surface of the ground to water in No. 2?

A I have two measurements here, 92 1/2 feet and 93 feet from the top of the curbing, and that is two feet from the top of the ground.

Q So that the water in the two wells stands about at the same elevation below the surface?

A Yes, sir; there is a very slight difference.

Q Can you tell us readily what the difference is in the elevation of the surface of the ground at the two wells? Of course, we can get it from the figures.

A The top of the curbings of the two shafts-- the difference of elevation is about 3 feet, in round numbers.

Q Were either of those wells connected with a tunnel?

A No. 1 is, and the discharge pipe from No. 2 runs into it.

Q What tunnel is that? Lone Star?

A No; it is really a pipe line, and it is 30 feet deep at well No. 1, and runs to the surface at the southerly portion of the lot 1000 feet, or such a matter, south.

Q There is no ~~xxxxx~~ tunnel that carries the water away to any distance?

A No, sir.

Mr. Haskell: Q Have you observed the gravel coming from these wells?

A In well No. 2 I saw some of it.

Q Has it worn gravel, such as you find in ordinary washes, worn by streams? A Yes, sir.

Q Did you observe the gravel coming from Well No. 1?

A No, sir; only as I saw it on the dump.

Q Was that of the same character, as you observed it? A Yes.

Q Do you know whether or not the both 2 tract wells were being pumped at the time that you noted the falling away of water in well No. 2 or about that time?

A I would have to refer to my notes.

Q Could you tell that fact by referring to your notes?

A No, sir; I have nothing to remember that by.

RE-DIRECT EXAMINATION.

Mr. McKinley: Q At what date were those water levels taken?

A On April 11, 1906, the water was 91-1/2 feet below the top of the curbing.

Q At each of the wells? A This is well No. 1. On May 20, 1907, the water was down 92 feet.

Q Which well? The same well? A The same wellx. On April 6, 1908, well No. 1, the water was down 91.7 feet.

Q Were you pumping at those dates? A On December 14, 1908, the water was down 101.8 feet. We were not pumping.

Q You were not pumping at any of the dates you have given?

A No, sir.

Mr. Britt: Q Did I understand you to say that in April, 1906 the water in well No. 1 was within one or two feet of the surface of the ground? A 91-1/2 feet below the surface on April 11, 1906.

Q And that last observation you made was 101 feet below the surface? A Yes, sir; you notice that the first elevation that I have given was in the spring of the year after the pump laid idle during the winter months, and this last measurement in December was shortly after the pumps were closed down.

Q Shortly after the pumping had ceased, after the season's irrigation?

A Yes, sir.

Q You stated that after pumping well No. 1 for about a week there was a slight decline in well No. 2; what was the amount of the decline?

A Well, from the time the pumping was commenced until we got the hole covered up it was in the neighborhood of 4 feet.

Q What was that length of time?

A It might have been 3 weeks; I am not certain about that time; possibly a month -- the total.

Q What is your recollection? How would you approximate the time?

A About three weeks.

Q Was the well No. 1 pumped during all that time?

A Yes, sir.

Q About 30 inches of water?

A In that neighborhood, yes, sir.

Mr. Waters: Q By what means was this pumping done, what kind of a pump?

A Deep well pump.

Q How deep?

A The bottom of the pump was approximately 100 feet from the surface.

Q And submerged how deep in the water?

A 90 feet.

Q Now, what kind of apump was it?

A It was a Garrett deep well pump.

Q A piston pump?

A Plunger pump.

Q And consequently the plunger operated in a cylinder, didn't it?

A The lower lifting valve operated in a cylinder in the bottom of the pump column; that was situated at the very bottom, and that lifted the water through a foot valve, and after the water passed through this lifting valve up the column, then the plunger took care of the water and forced it up from the top of the pump column.

Q Then the water was moved from the extreme depth of how deep?

A 190 feet.

Q Now, during the time of pumping and operating the pump, was the water level in the well lowered or not?

A Yes, sir.

Q How much?

A 20 feet that I know of; and I don't know how much more.

Q Well, you know that it was lowered more than 20 feet?

A Yes, sir.

Q But how much further down youm don't know?

A I would only have to guess at it; possibly 50 feet; I couldn't measure it; I tried to ---

Q Then you don't know the maximum, do you?

A No, sir.

Q Were both wells pumped by the same mechanism?

A Yes, sir.

Q That is, similar mechanism?

A Yes, sir.

Q Not the same. Do you know how much either one of the wells was lowered while pumping?

A No, sir.

Q How deep was the pump placed in the other well? Were both wells the same depth?

A No, sir.

Q How deep was the pump put in the other one?

A 50 feet below the bottom of the shaft.

Q And what was the bottom of the shaft about?

A I think 90 feet.

Q That would be 140 feet then?

A Yes, sir.

Q You don't know how low the water was depressed in that well by pumping, do you?

A No, sir; when we pumped -- when we first started to pump, as I stated before -- 40 inches of water, we got too deep down; we pumped the pump out of water, that is, pumped it out of water at the times it was sunk in the water, and allowed air to get into it, and break the water polumn, and we know that on the surface by the action of the machinery.

Q Then you lowered it, did you?

A Yes, sir.

Q So as to keep it submerged?

A No, we didn't lower the pump; we lowered the speed of the machinery.

Mr. McKinley: Q How deep do you say the shaft No. 1 was? There was a slight error some way. You ~~max~~ gave it once 90, and once 110: Which is correct?

A 90 is No. 2. It is 110 for No. 1.

Q No. 1 is 110?

A Yes, sir.

Q And No. 2 is 90: Is that right?

A Yes, sir.

Mr. Haskell: Q Do the pumping plants around the Red Hill and in that vicinity, including the 16th Street wells, cease operations in the fall of the year, all at about the same time.

Mr. McKinley: Objected to as incompetent, and calling for a general conclusion in regard to ~~it~~ it.

The Court: Sustained.

Mr. Haskell: He knows whether it is a fact or not.

Mr. Waters: I make the further objection that it is not responsive to the direct examination.

Mr. McKinley: It has been sustained.

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A. STINCHFIELD.

A Stinchfield, a witness called by defendants, being first duly sworn, testified as follows:

Direct Examination.

Mr. McKinley: Q Where do you reside?

A Cucamonga.

Q How long have you lived there?

A 20 years.

Q You were connected with the Sunset Water Company?

A Yes, sir.

Q And put down well No. 1?

A Yes, sir.

Q When did you put down that well?

A 1900 or 1901. I haven't any notes, but I think it was 1900 or 1901; 1901, I think.

Q Putting down that well at that depth did you strike water?

A About 70 feet, is my recollection.

Q And more as you went on down. You got more water as you went on down?

A Well, yes; of course it increased, but there was a long time that we didn't get much increase.

Q Did it rise in the well, the water?

A Yes, some.

Q About how much?

A I don't believe I can tell you; I don't think I remember.

Q The record which Mr. Cousins has given us a copy, is a correct record of the well? He got the copy from you? Mr. Cousins got a copy of the log from you, the log that he has been given here, the copy was furnished by you to Mr. Cousins, has it not?

A Yes, sir.

Q And was the correct log of the well?

A Yes, sir.

Q And those notes were all correct, made as it went along, in putting down the well.

A Yes, sir. The drawings of the well were all made at the time, and I have the original drawings at home.

Q You are a stockholder in the Old Settlers Water Company?

A Yes, sir.

Q Have you ever been an officer in the Old Settlers Water Company?

A Yes, sir.

Q What officedid you fill?

A I am president of the company.

Q When?

A Now.

Q How long have you been president?

A I think this is my second year.

Q Did you fill any office before then?

A I have been a director before; it was some time ago.

Q How long ago were you a director?

A Well, I can't tell you; I would like to explain a little: For the last six years, or nearly six years, until I took the directory in the Old Settlers, I haven't had anything to do, or much to do, with neither the Sunset or Old Settlers wells. Of course it is going back five years, and I haven't kept my mind charged up with it.

Mr. McKinley: (To Mr. Waters) Will you please, at the session of the court next week, furnish the minutes of the Old Settlers Water Company, to show who the officers were at different dates?

Q Did you observe the developments made by the Stowell -- the wells that were put down -- and the putting down of the Haskell well, and the carrying of the water by pipe lines to Ontario, along at the various times when those things were done?

A No, sir.

Q Did you know anything about them?

A Well, by hearsay; I never made any examination of them at all.

Q You heard about them being done at the times they were being done?

A Yes, sir.

Q How long ago did you first know of those things being done?

A Well, I don't know; I don't think I can remember.

Q A good many years ago?

A Yes.

Q You knew there was a suit in this court with reference to the matter of the diversion of water at Ontario about the time it was pending?

A Yes, sir.

Q And you knew of the McPherson suit, to restrain the diversion of the water sold by Stowell and the Cucamonga Fruit Land Company to the San Antonio Water Company, at the time it was brought?

A Yes, sir.

Q That was a matter of general discussion in that neighborhood, was it not?

Mr. Britt: Objected to as immaterial, irrelevant and incompetent.

A Why, I think so.

Mr. Waters: I suppose that is offered principally as notice to the grantors of the plaintiff, the Old Settlers Water Company.

Mr. McKinley: Yes, whatever it is worth, against the offi-

cers of the Old Settlers Water Company.

Mr. Waters: So understanding, I did not object. He is one of our grantors.

Mr. Britt: I infer it is not offered as evidence against the Cucamonga Vineyard Company, or the Cucamonga Land and Irrigation Company.

Mr. McKinley: The general discussion was intended to reach out a little in your direction.

Mr. Britt: We object to it as irrelevant, immaterial and hearsay, what this gentleman may have heard of the pendency in the community or the pendency in the court, of that McPherson case.

The Court: I think that objection ought to be sustained.

Mr. Britt: The witness having answered, I ask that the answer be stricken out, the witness not having heard my objection.

The Court: Stricken out.

Mr. Britt: The objection was made and the witness answered while the objection was being stated.

Mr. McKinley: Q Do you remember while these things were being done, you discussed them with any of the other parties who were in the Old Settlers Water Company, and who formerly owned water rights which they conveyed to the Old Settlers Water Company?

A I don't think I understand you.

Q My question is, whether you discussed with any of the persons holding the Old Settlers rights the matter of this suit, and the fact that developments were being made and the water being carried over to Ontario or away from Duca-

monga?

A I don't remember.

Q You don't know whether you did or not. That is all.

Cross Examination.

By Mr. Britt: Q That Sunset well No. 1 was sunk first as a shaft, was it not?

A Yes, sir.

Q To what depth?

A 70 feet or 72, I am not quite positive; 70 feet I think we struck water.

Q How long did the well remain as a shaft at that depth?

A When we struck water, of course we commenced to drill.

Q It was not an old shaft then when you began to drill?

A No, sir.

Q Now you stated that the water rose a little, raised somewhat. Do you mean that when you struck the water at 70 feet, that it raised in the shaft?

A Not at the time.

Q Well, the fact was, that after the well was completed it stood at some 90 feet below the surface, wasn't it?

A No, sir.

Q What was the fact in that regard?

A The water after the well was completed stood considerably nearer the surface, but I don't remember how near, but it rose above the 70 feet where we struck the water.

Q How long did it stand there?

A Well, it stood there until we installed the pump.

Q How soon did you install the pump?

A We installed a pump, and I guess the water stood there

perhaps two revolutions of the pump. We had a revolving pump; it stood there about two minutes. More than that, the pump did not make more than half a dozen revolutions before the water was gone.

Q Was that after you had completed the well?

A Well, of course we had to sink deeper.

Q What was the depth of the well when that happened?

A I don't remember; I couldn't remember without my notes, and I haven't them here.

Q What was the depth --

A Of the well when it was completed?

Q It was over 600 feet, it seems, when it was completed; but at the time you did that first pumping?

A Well, I say I don't remember.

Q Well, do you know about when it was?

A No, I couldn't answer the question; I couldn't tell anything how much it was.

Q What were you pumping for then? To test the well?

A Yes, sir.

Q You took out your pumping machinery, did you, and went to drilling again?

A Yes, sir.

Q And you can't tell about what depth the well had reached at that time?

A No, sir.

Q Was it half as deep as the well was ultimately bored to-- as the depth to which the well was finally bored?

A I don't remember.

Q Can't you give us any idea of that?

A I don't think I have.

Q Could you tell by reference to your log?

A I might. I don't know whether that shows on the chart or not; I can't remember that.

Q You have got a chart of the well, have you?

A Well, Mr. Cousins has a copy of the same one here.

Q The same chart?

A Yes, sir, I think he has it here. MK.

Mr. McKinley: Q You drilled further after thistime when you tried to test the well?

A Yes, sir.

Q It was not a matter of sinking the shaft deeper, but you drilled it deeper?

A Drilled, yes, sir.

Mr. Curtis: Q You say at the time the Sunset well was dug, you were an owner in the Old Settlers well, or the Old Settlers Company?

A Yes, sir.

Q Were there any other of the Old Settlers people in the Sunset Company?

A Yes, sir.

Q Who?

A D. R. Kilbourne.

Q And others?

A I was trying to think. I think Mr. Davenport, but I am not quite certain.

Q Any others?

A I don't remember.

Q You don't remember any others?

A No, I don't think I do. There are so many different companies interlocked with one another it is hard to segregate them.

Q The Old Settlers Company was not incorporated at that time, was it?

A No, sir.

Q Do you remember of talking with any of the Old Settlers owners about the sinking of the Sunset well at the time it was sunk?

A Well, I don't know.

Q You don't know whether you did or not?

A No, I don't; I can't remember.

Q Do you know whether any of the other owners besides yourself and those that you have mentioned here of the Old Settlers rights, knew that the Sunset well was being sunk by the Sunset people at the time it was sunk, the well No.1?

A Well, I presume that all of them knew it.

Q It was a matter of general conversation?

A It was.

Mr. Britt: I move to strike that out as a matter of conclusion.

The Court: Stricken out.

Q Do you know whether it was discussed by them or not?

A I do not.

Q You had charge of putting the well down?

A Yes, sir.

Q Did you have charge of putting in the pipe line afterwards, that led from the well to the stockholders?

A Yes sir.

Q Will you give a general idea of how that work was carried on, especially the laying of the pipe line?

A Well, the pipe line I think is -- we run a tunnel from Base Line to the well, and we capped the well at 30 or 32 feet from the surface.

Q How long was that tunnel, about?

A Well now, I can't tell; I think we were about 2/3 or 3/4 the width of the 10 acre piece. I think so. It is nearer the north end -- the well is sunk -- we purchased 10 acres from Mr. Stanton, and the well is nearer the north end -- well within two or three hundred feet of the north end; and the tunnel runs to the Base Line, or possibly not quite -- simply put the pipe under ground.

Q What Mr. Stanton? What were his initials?

A Well, we bought the ten acres of ground from Mr. Stanton to sink the well on.

Q Was he a member of the Old Settlers Company at that time?

A No, sir, he never was.

Q Well, go on and explain the work, of putting in the pipe line from the mouth of the tunnel on down to the lands of the stockholders of the Sunset Water Company.

A We laid a steel pipe -- it is all steel pipe; the first is 12 inches in diameter; that runs down to the corner of Base Line and Archibald Avenue; then there is a branch runs from Archibald avenue to slightly past Turner Avenue; I don't remember how many feet; then going down Archibald Avenue, I don't remember exactly how far, we reduced to

to ten inches; we went on down further and reduced to eight, I think, and further down six; and finally five at the last end.

Q Was the pipe laid underground?

A Yes, sir.

Q Trenches dug and pipe laid in the trenches?

A Yes, sir.

Q Was it run along the public highway, or on private property?

A On private property.

Q Near the public highway?

A Yes, sir.

Q How near?

A Well now, I can't tell exactly how far it would be, but it is only a few feet from the line.

Q Five feet or a hundred feet? About how far from the line?

A It was not a hundred feet.

Q About how far was it?

A Probably 4 or 5 feet. I don't remember particularly about that.

Q The work could be seen plainly from the highway, could it?

A Yes, sir, it crossed the -- after going down to -- we crossed the avenue from the east side -- we went down on the east side, and crossed over near what was at that time Capt. Ray's property,-- Mrs. Ray owns the property now -- and crossed over to the west side and continued down that side, all on private property.

Q Was any objection ever made to your carrying on that work, digging the well, or extending the pipe line by any of the owners of the Old Bottlers Company?

A No, sir.

Q Was any objection ever made by the Cucamonga Vineyard Company?

A Never; not to me; I don't know what else might be.

Q Or by the Cucamonga Land and Irrigating Company?

A No, sir, not to me; not that I ever heard of.

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E. E. DILLMAN.

E. E. Dillman, previously sworn, being recalled for further cross-examination, testified as follows:

Cross Examination.

By Mr. Britt: Q You were requested the other day to produce a log of the Sourwine well. Have you it with you?

A Yes, sir.

Q And at that time, you read the log into the record?

A Yes, sir.

Q Was that log kept by yourself, or was it under your direction?

A It was kept by the drillers, and I took a copy of it.

Q Then you were requested to produce a record of the quantity of the water pumped from the well, you stating that you had a record of it.

A Yes, sir.

Q A record of the quantity of water extracted from the well. Have you such record now in court?

A I have a ~~typewritten~~ tabulated list of the days, that is days by

the month, and the amount of water pumped each month.

Q And this tabulation is drawn from the original record, is it?

A Yes, sir, in a great measure.

Q And from what other sources? You say it is drawn in a great measure from the original record?

A Well, I might say altogether from the original record.

Q This begins, the paper you now show me begins August 19th, 1901: Was that the time when you began to take water by means of a pump from the Bourwine well for purposes of irrigation?

A We had a 48 hour run in May previous, as a test, and we irrigated the ten acres at the well with it.

Q When you began to pump in August, 1901, what did you do with the water?

A It was carried through the pipe line to the stockholders for distribution.

Q Where?

A Mr. Bourwine's place, north-west of Base Line, and to the Mountain View tract south-west of Mr. Bourwine.

Q Those places are how far distant from the Bourwine well?, the ten acres on which the well is situated?

A Mr. Bourwine's place was about four miles and the Mountain View tract about a mile further.

Q To the westward?

A Yes, sir; southwestward.

Q Now, this tabulation, I will allow you, if you please, to state here what it contains and what the figures mean.

A You wish me to read it?

Q Well, no, the tabulation will be here and filed with the record. Just tell us what the various figures mean. The left-hand column of the sheet shows the year, does it?

A The left-hand column shows the year. The next column shows the month, and day of the month when measurements were made. It shows where measurements were made and when pumping. The time pumped, August 19th to 31st.

Q Then the third column.

A Shows the number of days run during that time.

Q And the fourth column?

A The fourth column the days stopped during the time; and the fifth and sixth column gives the totals of runs and stops during the year, during the fiscal year. The last column shows the miners inches pumped each month.

Q Now for example, reading across the page, the first entry is, 1901, August 19th to 31st, days run 13, and inches pumped 40. That means 40 inches pumped for 13 days, does it?

A An average head.

Q During the 13 days?

A Yes, sir.

Q Then the next line is, September, 1901; days run 26½ days; days stopped 3½; and the inches pumped 40; that means that 40 inches were pumped for 26½ days during September, 1901, does it?

A That is the meaning of it; yes, sir.

Q Then this shows that the pump was operated for 50 days in 1901 for 144½ days in 1902; 103½ in 1903; 110½ in 1904. That is right, is it?

A

A That is right; that is correct.

Q In 1905, 46 days.

A Yes, sir.

Q In 1906, 70 days; in 1907, 69½ days, and in 1908, 99 days?

A That is true.

Q Now it seems, take 1902 for example, in the month of July there are 25½ days of operation of the pump. Is that correct?

A Yes, sir.

Q And the number of inches pumped was 40. That means there was an average of 40 inches on each of the 25½ days, does it?

A It was an average continuous head of 40 inches.

Q Was that pumping day and night?

A It was day and night, except with breakdowns.

Q In 1904, I notice that the quantity of water declined, sometimes to 36½ inches, sometimes 35, and as low as 30, and in recent years, that is 1905 to 1908 it has been ordinarily 35 inches: Was that because the water supplied by the well diminished or because for some reason or other you needed less water?

A Until the close of 1904 we used a Worthington steam pump, requiring a suction; and towards the latter end of the season of 1904, our pump was not working quite as well, and the water was lowered until we would reach suction limit if we pumped a larger head of water. We diminished the quantity of water to keep within suction. In the beginning of 1905, we changed from a steam pump to a deep well pump,

which throws 35 inches of water, which accounts for the continuous head of 35 inches the following four years. I will say that during the last four years that we have never lowered the water out of the shaft, there being an increased supply of water.

Mr. Britt: We offer the tabulation presented by Mr. Dillman in evidence, and ask that it be marked plaintiffs' exhibit 79.

Said tabulation is admitted in evidence, marked plaintiffs' 79, and is here extended in the record as follows:

PLAINTIFFS' EXHIBIT # 79.

The Upland Water Co.

	Time run by pump.	Run da.	Stop da.	Run Totals	Stop Totals	Inches Pumped.
1901	Aug. 19-31	13				40
	Sept.	26½	3½			40
	Oct. 1 to 26	13½	7½	53	11	40
1902	April 23-30	8				40
	May	25	6			40
	June	25	5			40
	July	25½	5½			40
	Aug.	27	4			40
	Sept.	23	7			40
	Oct.	5	26			40
	Nov. 1-6	6		144½	53½	40
1903	June 19-30	16				40
	July	21	10			40
	Aug.	28½	2½			40
	Sept.	24	6			40
	Oct. 1-26	14	12	103½	30½	40
1904	May 19-31	3½	9½			36½
	June	20	10			37
	July	23	8			37
	Aug.	26	5			35
	Sept.	23	7			30
	Oct. 1-22	15	7	110½	46½	30

Pipe line was completed Aug. 18, 1901. Pump was started immediately as the people needed the water.

The Upland Water Co.

Time run By Pump.		Run da.	Stop da.	Run da.	Stop da.	Inches Pumped.
1905	Aug. 1	21	10			35
	Sept.	1[illegible]	1[illegible]			35
	Oct.	6	25			35
	Nov. 5	34		46	50	35
1906	Aug. 4	20	9			35
	Sept.	20	10			35
	Oct.	20	11			35
	Nov. 20	10	10	70	40	35
1907	June 3	17½	10½			35
	July	19½	11½			35
	Au .	20½	10½			35
	Sept.	19	11			35
	Oct. 24	14	10	89½	53½	35
1908	May 11	12½	0½			35
	June	10½	11½			35
	July	10½	20½			35
	Aug.	20½	4½			35
Sept /	16 14			35		
	Sept.	16	14			35
	Oct.	4½	26½			35
	Nov. 30	10½	19½	99	105	35

On May 23 & 24, 1901, for a test of machinery ~~for~~ ~~exhaurxx~~ and well the pump was run continuously for 40 hours, throwing an average of about 60 inches without breaking suction.

Q What are those other sheets you have there of white paper? Are those the original records?

A These are some original records as kept by our steam engineers at the time of running the steam pump.

Q Did you personally make this tabulation?

A I personally made that tabulation.

Q Have you any reason to suspect that it is inaccurate in any way?

A There might be an inaccuracy of a day during the year or something that way, that I didn't calculate quite down to the actual hours, but in the whole it is accurate.

Q How did you arrive at the quantity of water discharged by the pump during these several years - did you measure it yourself or have some professional measure it?

A During the second, third, and fourth year of running the steam pump, our engineers were supposed to keep a measurement each day of the amount of water that was pumped, and the amount of fuel oil used, and other tabulations, and from their original records I took the measurements for the copy.

Q Well, now, what was the plan of measuring,- what was your formula?

A We made a box with a weir, and the engineers had a card that was got out by some civil engineers, showing the depth of the water over the weir, so many inches per width of the weir,- used that formula.

Q What was the width of the weir?

A I believe it is 30 inches.

Q Have you always used the same weir?

A We have always; I have measured it myself a number of

Q. What was Chesterfield doing the last time you saw Lord Ivor?

A. Chesterfield was with Lord Ivor.

Q. Have you been accustomed recently to see Lord Ivor in company with the Chesterfield?

A. I have.

Q. Did you personally meet Lord Ivor?

A. I personally made Lord Ivor's acquaintance.

Q. Have you any reason to suppose that it is impossible he may exist?

A. There must be an impossibility in a thing before one can say it wouldn't. That is, that I don't believe Lord Ivor's existence, but he is not what it is impossible.

Q. Has any one notice of the quality of wine consumed by the gang during their stay? Yes - did you consume it personally or have some substitute drunk it?

A. During the month, Lord Ivor, and Lord Chesterfield, the gang, our companions had supplied it from a wine-cellar each day, at the amount of about that one gallon, one the amount of five gallons, and which consumed, we then made arrangements I took to substitute for the day.

Q. Well, now, what was the char of substitute, and how was your formula?

A. We made a fog with a wine, and the substance had a kind that was put out by some with [illegible], thereby the wine or the water over the wine, or some thing for which of the wine - used was [illegible].

Q. What was the width of the water?

A. I believe it is 30 inches.

Q. Does you always wear the same pants?

A. We have always I have changed it myself a number of

times there, with the same formula.

Q And these measurements you have given are those of the water measured at the pump?

A At the pump; yes, sir.

Q Did you keep measurements also of the water that was delivered at Upland?

A We did; that is, there was one year the zanjero records it in this book, but I measured it myself a number of times, and I found it corresponded very accurately with the water measured at the pump.

Q How much loss or wastage was there on the way?

A Well, there was less than an inch,- never could find more than an inch discrepancy.

Q Did you measure it over the same sort of a weir at Upland?

A Similar.

Q Have you ever had it measured by any professional engineer

A I don't remember - after we began pumping as a regular irrigation, I don't remember its being measured by a professional engineer; on our 48 hour test we had a professional engineer that kept a record of it.

Q Who was it?

A C. E. Mount, Lordsburg.

Q Do you remember what that measurement was?

A I have it here, yes, sir.

Q Will you give it to us, please.

A We had a civilengineer there to watch the test of the well and of the machinery; the Baker Iron Works putting in the machinery, we wanted to see whether they complied with their contract or not, and Mr. Mount was there on that, during

the 48 hours of the test, and this is the report as sworn to by him.

Q The purpose was to see whether the pump discharged the quantity of water that they had contracted it should discharge was it?

A Well, according to the amount of fuel oil used.

Q Well, how much did he report to you about the measurement?

A He says that the pump was run 48 hours continuously during the test - This is only a part of the report,- The minimum amount of water pumped was 48.5 inches, during the first hour of the test; the maximum amount of water pumped was 64 inches, on the last day of the test. There is more here.

Q Well, that is all I care for. Did I ask you the other day about the elevation of water in that well when it was not pumped?

A You asked some questions in regard to it. I can answer others.

Q I understand from you now that the pumping of 40 inches from thenwell had the effect, or at any rate it was followed by a lowering of the water in the well, so that the pump threw less than 40 inches?

A The first season we pumped, after the 50 days pumping, or about 50 days pumping, we sunk our shaft 8 feet deeper before we struck water; during that time the water level had lowered by that amount. The second year at the end of the pumping season we lowered our pump again about 15 feet, if I remember correct. The third season about 8 feet; and the fourth season, the close of 1904, about five or six feet

to the bottom of the shaft at the present time. Since that the water has raised.

Q I think you stated that the other day. Yes, you gave us those figures. Is there any other document or record that I asked you to produce?

A I don't know of any.

Mr. Haskell, Q You have given the method of your measurement whilst the steam plant was in operation: What was the method of measurement after the deep pump was placed in ?

A The same method.

(The reading of Exhibit 79, admitted in evidence is waived

Mr. Joliffe, Q I understood you to say in answer to a question by Mr. Britt, that the first year or two that these measurements were kept by the engineer in charge of the well: Who was that engineer?

A John Rarick was one, and John M. Packard another one.

Q Was Mr. Sourwine's son in charge at any time?

A He was, and Mr. Sourwine himself also at one time.

Q I inquire particularly of James A. Sourwine, if he was in charge. If so, state when it was if you can from your record?

A I find that in June, 1904, James A. Sourwine was one of the engineers; July the same; And August the same; and September the same.

Q Mr. James a Sourwine was a civil engineer was he not as well as engineer in another capacity?

in the hallway of the place at the present time. Since that time nothing has taken.

Q I think you stated that the victim was, Yes, you gave me those figures. Is there any other evidence to prove that I asked you to prove not?

A I don't know of any.

Mr. Tuttle: The here from the testimony of your statement which the crime plant was in operation; that was the result of conversations after the drug prop was placed in?

A That came without.

(The reporter at Detail 7, omitted to mention is below)

Mr. Tuttle: Q I understand you to say in answer to a question by Mr. Kirby, that the first time or the last time conversations were kept by the defendant in charge of the hall: Who was that witness?

A John Morrow was one, and John T. Thomas another one.

Q Was Mr. Thomas's son in charge at any time?

A He was, and Mr. Thomas himself was at the time.

Q I inquire particularly if James A. Thomas, if he was in charge. If so, state when it was if you can from your record?

A I find that on June, 1921, James A. Thomas was one of the witnesses; July the week; and August the week; and Sept.ember the week.

Q Mr. James A. Thomas was a civil engineer was he not as well as engineer in another capacity?

A He was studying civil engineering at that time, and is now a civil engineer as I understand it.

Mr. Britt, Q You stated that in recent years the water has been rising in the well,- the water level, the water-plane?

A It has.

Q Was it as high last season, 1908, as it was in 1901?

A It was about the same level; very near it. I don't know just whether it was quite or not.

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D. R. KILBOURNE.

D. R. KILBOURNE, a witness called by defendants, previously sworn, testified as follows.

DIRECT EXAMINATION.

Mr. McKinley, Q You are the same Kilbourne who conveyed to the Old Settlers' Water Company?

A Yes, sir.

Q Did you convey to the Old Settlers' Water Company? Did you make the conveyance to the Old Settlers' Water Company in January, 1903? Did you make a deed to the Old Settlers' Water Company, or is T.L. Kilbourne some one else?

A Well, I made a deed of my water to the Old Settlers' Water Company.

Q Then this is you that is referred to in this chain of title: It reads T.L. Are you a stockholder in the Old Settlers' Water Company?

A I am.

Q Are you an officer now?

A I am one of the directors.

Q How long have you been a director?

A Ever since its incorporation.

Q Have you occupied any other position?

A I have been President of the Board for about three years.

Q Who supervised the putting down of the well belonging to the Old Settlers' Water Company?

A I did.

Q Have you the log of the well?

A I don't think I have; I think that after I went out of office that it was turned over to Mr. Fox, and we have failed to find it since.

Q You are unable to find it?

A Yes, sir.

Q If you should find it, will you produce it or send it in?

A I will.

Q Have you any recollection in regard to the course of the well as it was put down, and the point at which you struck water?

A Oh yes.

Q At what depth did you strike water?

A Well, there was a shaft when we bought the property, there was a shaft on the property 76 feet deep, and there was water in it at that time; they pumped some water there; there was a pump in it and they pumped some water there.

Q Do you know who put down that shaft?

A No, I don't.

Q Do you know how long it had been there?

A Well, I came to California about 1896 and it was there then

Q After you put the well down deeper did you sink the shaft any?

A We didn't sink the shaft any deeper; we bored the well; we drilled the well.

Q Leaving the shaft the same. To what depth did you drill?

A The bottom of the well was I think 448 feet from the surface of the ground, and it was drilled, all excepting about 70 feet.

Q Did you strike other water strata as you went down?

A Yes, sir.

Q And in considerable quantities?

A Yes, sir; we went through several stratas of water gravel.

Q Did the water raise any as you struct additional strata?

A Yes, sir.

Q About how much?

A Well, when we got through with the well, the water stood at 24 feet from the surface.

Q Do you know how much of a raise that was from what it was before?

A There was about four feet of water in the shaft when we commenced drilling, and that would be about 72 feet, and 20 off would be about 52 feet; the water raised about 52 feet.

Q Have you pumped that well any since you testified here last?

A Yes, sir.

Q When?

A We pumped it but very little this last summer.

Q About how much?

A Not to exceed eight or ten days.

Q What did it yield when it was pumped?

A We used a deep well pump.

Q What was the yield,- what did it produce?

A About 50 inches.

Q When was that approximately in the season, what month?

A Well, we had one stockholder in the company that can't get water from any other source, and we pumped him a day's water every thirty days; and we pumped about five days for him And there was two or three days that was pumped for other individuals in the company that needed a little water, probably eight or ten days in all; when we pumped it we pumped 24 hours in the day.

Q Did you know of the developments that were being made around the red hill, at the time they were made in recent years,- any developments that were made there, and pipe lines constructed and water taken to Ontario?

Mr. Waters: We object to that unless they make their question more specific.

Mr. Mc.Kinley: I withdraw the question.

Q Did you know of the construction of the pipe line carrying water from the well, which had been put down by Stowell, sometime before you came to Cucamonga?

Mr. Stephens: I suppose it is not intended this shall bind us?

Mr. Mc.Kinley: No, sir; I don't say that it will bind other parties; it may indicate a general condition of knowledge there.

Mr. Stephens: We object to it so far as it has any application to the plaintiff represented by myself.

Q The well being existent at the date you first came to Cucamonga.

Mr. Waters: I think the gentleman ought to specify the pipe line.

Mr. Haskell : And the well.

Q Did you know about the construction of a pipe line from the mouth of the Eadie tunnel in the direction of Ontario

Mr. Stephens: Now, we make the objection on the part of the plaintiffs we represent.

The Court: Overruled.

Mr. Stephens: Exception.

A I knew of the construction of a pipe line from the Eadie tunnel towards Ontario; that was done after I came to California; The previous pipe line I don't know anything about.

Q Were you informed as to what water was put into that pipe line?

A Oh, I don't know as I was informed; it was a general understanding,- it was water from some wells that were put in there, that went in that direction.

Q You understood that that pipe line was put in and carried water from some of the wells up above the Eadie tunnel did you not?

A Well, there was a winery down below there, but I didn't believe it was made to carry the wine over. Otherwise it must have been made to carry water over.

Q You understood that about the time the pipe line was finished didn't you?

A Yes, sir; I supposedit was made to carry water over there.

Q Now, then, did you know anything about the putting down

Q. Do we will take exception to the data you first gave in
evidence.

Mr. Stewart: I think the questioning is quite in
place.

Mr. Chairman: Go ahead.

Q. Did you have about the expropriation of a pipe line
from the money of the Indian Treaty in the province of Ontario?

Mr. Stewart: No, no, no, no objection, the part of
the Indian is in question.

The Chairman: Proceed.

Mr. Stewart: Continue.

A. I know of the negotiations of a pipe line from the Indian
Treaty Lands including that the Indian Act. I read in Ontario
only. The previous pipe line I don't know anything about.

Q. Have you anything to do with negotiations for the
pipe line?

A. No, I didn't know so I was informed; it was a pipe line
negotiations. It was under from some India that were po
lution, so we had to use a direction.

Q. The negotiations that that pipe line was in the varying
water from some of the India of Ontario and Ontario Energy Board
was not?

A. Well, there was a varying some Indian claims, but I didn't
believe it was right to carry the claim over. Ontario is good
case that ought to apply with them.

Q. The negotiations that about the Indian Treaty line
finished don't you?

A. Yes, sir; I negotiated it was time to carry money over Indian
a. Now, that, did you have anything about the pipe line

of another well by the Ontario Power Company?

A No, sir; I don't know much about the putting down of wells over there; only as I would go through the country occasionally, I saw the wells were being put down, but really didn't know how they were distinguished one from the other.

Q Well, state whether along about 1902, you knew of a new well being put down there, and connected up and water carried to Ontario?

A I do not.

Q Did you hear of it?

A I presume I have; I don't just remember now of any conversation that would inform me of that fact; I presume I did.

Q Did you know anything about the Haskell wells?

A Oh yes; I have seen the Haskell well often.

Q About the time they began taking water from there to Ontario did you hear of it?

A Oh, I think I did.

Q Have you seen the 16th Street wells belonging to the San Antonio Water Company?

A I really don't know what the 16th street well is.

Q Well, did you hear of or see a number of wells along the Base Line road?

A Yes, sir.

Q And at about the time they were being put down?

A Well, I don't know as I ever saw the parties in construction of those wells, any but one; there was one, I think the furthest east, I saw the parties when they were sinking that well; but the other wells I really don't know when they were sunk.

Q Well, you heard of the fact that they were being sunk, and that water was being taken from there to Ontario?

A Well, I knew there was water going to Ontario, and I knew it was coming from that district, somewhere along in the early years, of my caling to California; that is from 1900 on; But, you understand that before that time I didn't pay much attention to the water; we got plenty of water from the Springs, and I didn't give the matter any thought or attention; I supposed we were always going to get it.

Q When the amount of water you were getting from the Springs fell off, did you make any investigation as to what had happened to it?

A Yes, sir; I did.

Q And you heard about these matters that I have spoken of at that time did you not?

A At that time; yes, sir.

Q Did you hear anything soon after you came here, with reference to the trial of the case of Mc.Pherson against the San Antonio Water Company and other parties, seeking to restrain the diversion of water?

Mr. Britt: That testimony is not offered as against the two Cucamonga Companies?

Mr. Mc.Kinley: Not as against anybody but the Old Settlers Water Company.

A Well, I have heard that there was a suit of some kind about water, but the nature of the suit I don't know anything about; I have heard it represented that they thought the Cucamonga people got it in the neck pretty badly, and I heard quite a number express the opinion that Judge Mc.Kinley was

instrumental in that connection.

Q And you heard that he was undertaking to stop the taking of water from that region over to Ontario?

A I have heard that there was something about - -

Q And you heard it about the time the case was tried?

A Oh, no; I never gave it any attention, and I might not have heard much of anything about it, of any talk about it, for a year or two.

Q For a year or two?

A Yes, sir.

Q But you think it was within a year or two that you heard of it?

A Well, I mean a year or two after the case was tried.

Mr. Waters: When was it tried?

Mr. McKinley: It was tried in February, 1900.

Here the Court takes a recess until 1:30 o'clock p.m.

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AFTERNOON SESSION:-

CROSS EXAMINATION.

Mr. Britt: You mentioned, Mr. Kilbourne, that for some years after you came to California, I think you said, you had plenty of water from the springs?

A Yes, sir.

Q What springs were those you mentioned?

A It was the springs about the Red Hill.

Q The Cucamonga Springs?

A The Cucamonga Springs; yes, sir.

Q When you spoke about above the Red Hill do you mean the country there immediately to the east of the Red Hill?

A To the east and west of the Red Hill.

Q When did you come to California?

A I came to California in the spring of '98.

Q And settled in the neighborhood of the Cucamonga springs?

A Yes, sir; east of the Cucamonga springs a half a mile.

BY MR. CURTIS:-

Q Mr Kilbourne, are you acquainted with the Sunset Water Company's wells?

A Yes, sir; somewhat.

Q The two wells that have been testified to?

A Yes, sir.

Q Were you living at Cucamonga at the time they were bored?

A Yes, sir.

Q Did you have anything to do with boring them?

A No, sir.

Q Were you associated in any way with the people who put

the first well down?

A Yes, sir; I owned a little interest in the well.

Q You owned a little interest at the time?

A Yes, sir.

Q Are you a stockholder in the company at present?

A I am.

Q And you knew of the wells being put down and you knew also the pipe line as it was constructed?

A Yes, sir.

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Mr. Joliffe: I have here a paper prepared by Robert Manly to complete his testimony of yesterday as to the amount of work done in distributing the water in the Cucamonga Creek of Canyon.

Mr. Britt: There is no objection to that.

(Statement of labor performed and amount expended in distributing water of Cucamonga Creek, by Robert Manly.)

Mr. Joliffe: (Reading)

January 24, 1908,	3 men	3.75
January 25, 1908,	2 men	2.50
January 26, 1908,	2 men	2.91
January 27, 1908,	2 men	4.16
January 28, 1908,	2 men	3.39
January 30, 1908,	1 man	2.50
February 3, 1908,	2 men	5.00
January 22, 1909,	3 men	6.50

Mr. Lucy continued:

A. Yes, sir; I would be little interest in the well.

Q. You would be little interest at the time?

A. Yes, sir.

Q. Are you a stockholder in the company at present?

A. I do.

Q. What you learned the while looking particular and you saw when the pipe line as it was constructed.

A. Yes, sir.

Mr. Lafitte: I have here a paper prepared by Henry Lucy to counteract the testimony of witnesses on the second of week then, in discussing the water in the Tuscarora Creek at Oswego.

Mr. Smith: This is an objection to this.

(Testimony of Henry Lucy introduced and marked Complainant's Exhibit No. 10 in discussing water in Tuscarora Creek, Oswego County.)

Mr. Lafitte: Continued

January 24, 1908.	2 men	4 2.00
January 25, 1908.	2 men	2.00
January 26, 1908.	2 men	2.00
January 27, 1908.	2 men	4.00
January 28, 1908.	2 men	2.00
January 29, 1908.	2 men	2.00
February 3, 1908.	2 men	2.00
February 4, 1908.	2 men	2.00

January 23, 1909, 2 men $ 4.00

January 25, 1909, 2 men 4.00

This list does not include Fuller's men.

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B. C. SHEPHERD.

B. C. SHEPHERD, heretofore sworn and examined, being recalled by defendants, testified as follows

DIRECT EXAMINATION.

Mr. McKinley: Q Mr. Shepherd, have you made the tabulation of the expenditures on these developments?

A I have made an examination of the expenditures on the 16th Street property; but the other I have not been able to get at that yet. It was a larger job than I thought I was undertaking.

Q Well, you may do that hereafter. And the statement in regard to the bonded indebtedness, have you prepared that?

A No; I have not.

Q You can do that then, and I will turn you over to Mr. Britt with reference to the data that he wants to ask you for.

CROSS EXAMINATION.

Mr. Britt: Q Let us see the tabulation that you have of the expenditures, Mr. Shepherd.

Mr. McKinley: He says he hasn't got that yet.

Mr. Britt: He says he has for the 16th Street well.

Mr. McKinley: This is not complete, Mr. Shepherd. Is that what you said? This tabulation seems to cover some other things

also.

A On the 16th Street property I include the Haskell and the Rubio. The type-writer put in $130,000 item for the Red Hill, which I have deducted from the bottom.

Q Otherwise it is all 16th Street?

A Yes, sir.

Q That is, 16th and the continuation along there?

A The continuation of 16th Street.

Mr. Britt: This does not seem to be accompanied by any dates except the balance November 15, 1897.

Mr. McKinley: We will make this fuller. I will have this made more complete with the dates and so on. You will do that and get the dates of the expenditures as far as possible.

A If I am to take the dates in detail it will take me about a month in theoffice.

Mr. Britt: Oh, I don't care anything about that.

Mr. McKinley: Oh, just approximately for the year.

Mr. Britt: For example, in the pumping plants, $14,000, there is no date given; not even the year.

Mr. Waters: We will want at least the year.

Mr. McKinley: We will make that more complete.

The Court: You prefer to have that more definite?

Mr. Britt: As Mr. Waters suggests, we would like to have the year.

A The system in which they keep the books is not in very good shape to get the memorandums in the shape that you require them; and if I go into detail I will have to have a week or ten days in the office. There are about twenty thousand vouchers there that will have to be gone through.

Mr. Britt: I doubt very much whether it would be of any materiality either to the defendants or to theplaintiffs here to have it with that much particularity. We don't want the details of expenditure for every gallon of oil or every foot of pipe or day's wage. If we can have the information about the expenditures made for the acquisition of the various principal pieces of property with an approximation to the time, I think, as far as the plaintiffs are concerned, it will answer our purposes.

Mr. McKinley: I have suspended with him in order to have that prepared. I think what we will ask him to furnish next time will save him much labor and, on the other hand, it will cover everything that anybody desires.

Mr. Haskell: I think the operating expenses should be carried separate and apart from the permanent improvements.

Mr. McKinley. Yes; we are not going to show our operating expenses.

Mr. Britt: The time when the expenditures were made is material in some other aspects of the case, aside from that of the mere amount expended.

Mr. Britt: Q Are you a book keeper, Mr. Shepherd?

A Yes, sir.

Q Did you keep the books during the time you were secretary?

A Yes, sir.

Q Of the San Antonio Company?

A Yes, sir.

Q And did you keep the minutes of the proceedings of the stockholders and the directors?

[illegible]

[illegible] I think very much [illegible] it would be to say [illegible] [illegible] [illegible]

A Yes, sir.

Q And the same, I suppose, after May 12, 1902, in regard to the minutes of the proceedings of the stockholders and directors of the Ontario Power Company?

A Yes, sir.

Q Now, will you refer to these books, Mr. Shepherd, and give us the date when the expenses were incurred by either the Ontario Power Company or the San Antonio Water Company of extending that Eadie tunnel after the acquisition of the stock of the Ontario Power Company by the San Antonio Water Company? It would be some time after May, 1902.

A I have a few of the vouchers here which refer to that.

Q Is there no account in the books which would show it succinctly and compactly-- which would contain those entries in brief compass?

A Not in the shape that you want it.

Q Can you show us the account in the books at all? It may be that the shape that you have it there will suit us.

A There is an account called Cucamonga Tunnel.

Q Beginning when?

A September 18, 1902.

Q In what book does this appear?

A That is the ledger of the Ontario Power Company.

Q Has it a column there referring to the items in the original entry?

A It has.

Q Those original entries appear in what? A journal or day book?

A A journal.

Q. Yes, sir.

Q. And the date, I mean, after May 12, 1965, is signed by the chairman of the Commission, is the Indiana Electric Power Company?

A. Yes, sir.

Q. Now, will you review for Judge Barnes, Mr. Chairman, and give the jury what the Commission were asked by either the Indiana Power Company or the Gas Indiana Water Company of Michigan City Indiana based after the acquisition of the stock of the Gary Power Company by the Gas Indiana Water Company in early in June of 1965.

A. I have a list of the Commission's over which refer to that.

Q. Do have an account in Indiana which would show it authority and correspondence which would provide those activities in detail?

A. Are in the above list?

Q. Can you show me the account in the book at all?

A. Why is that one more than you have it there will suffice.

A. There is an account called Commerce Commission.

Q. Beginning when?

A. September 17, 1965.

Q. In what year was this account?

A. That is the inception of the Gary Power Company.

Q. Was it a matter more referring to the issue in the original matter?

A. It was.

Q. Those original matters appear in what a general or day book?

A. General.

Q What is called here the Cucamonga Tunnel, is that the same hole in the ground as what has been spoken of here as the Radie tunnel?

A I think it is.

Q Is this account continued anywhere else in the book? What data is this on the next page?

A That is for Stowell Tunnel Repairs. That is a different account.

Q Is there another ledger account which is a continuation of the account on page 54?

A That seems to have been transferred on October 31, 1903, by a journal entry-- It looks to me as if it might be transferred to what is called the Stowell Tunnel, but I will look and see. Yes. That is transferred to another account called the Stowell Tunnel.

Q In October, 1903?

A October, 1903.

Q And it follows along until what date?

A November 1st, 1907.

Q That is, the Stowell tunnel and the Radie tunnel and the Cucamonga tunnel all mean the same excavation, do they?

A I think it does.

Q I will ask you to take that first account and refer to the journal entries and state them here, so that we may see what the several items of expense relate to.

A I haven't got the journal here. I looked at the journal and it gives no information whatever what the items were for or whom the money was paid to. The vouchers would have to be brought down here.

Q. Then is Hotel Jerr in Chesapeake Tunnel. Is that the
responsible is the ground as that has been weight of Jerr is
the Hotel tunnel?

A. I guess it is.

Q. Is this system resulting hydrogen plan in the tunnel
that takes in this as the Jerr Hotel?

A. That is for Chesapeake Tunnel Jerr. That is a different
system.

Q. Is there another Jerr hydrogen system in a position that
affects Jerr as the Hotel?

A. That has to do with Jerr Chesapeake Tunnel on October 21, 1992
by a general design -- it basically is to be a 12 million gallon storage
Jerr. It was to replace the Chesapeake Tunnel, but I will
tell you now. The Jerr is considering to replace
replace the Chesapeake Tunnel.

Q. In October, 1992?

A. Yes.

Q. Jerr is Jerr there other well gas Jerr?

A. Jerr is Jerr there well gas Jerr?

A. That is, the Chesapeake and the Hotel and the
Chesapeake tunnel all same the same connection, do they?

A. I think it does.

Q. I will ask you to look that Jerr Jerr document and refer
to the journal entries and state Jerr Jerr, so that it may
and what the several items of expense relate to.

A. It seems Jerr Jerr. I look at the journal
and it gives an information whether what the Jerr
Jerr or what Jerr Jerr Jerr. The expenses would have
to be brought Jerr Jerr.

Q Have you the vouchers? You have some of them.

A I have just picked out a few that refer to work referred to--

Q Let us see what they were. Were you keeping the books yourself at that time?

A Yes, sir; or a book keeper under me.

Q Do you know how it happens that your journal is so barren of information on the subject?

A The system of keeping books by vouchers of this kind/, it is not necessary to duplicate your work. If we had known that it was to come up and you would want it in this shape we might have had the books put that way just as well. But we took what would give us the least work at that time.

On December 8, 1902, there is an account of A. L. McConnel for work done in the month of November, 1902, for filling in old shaft, $15. Changing the siphon and putting in new gate, $100., from which there is a credit at the Upland Machine Shop of $2.15. Net account, $112.50.

January, 1903, for work done in December, 1902, retimbering 300 feet of tunnel, retimbering 70 feet below weir, 10 feet above weir, 56 feet pipe, laying of branch above weir, repairing shaft, setting two gates in weir, total amount, $440.

August, 1903, a bill from A. L. McConnel for work done in July, Stowell shaft, 81 feet at $4, 13 feet at $12, pipe laid in Stowell tunnel, 441 feet 30-inch pipe, 191 feet 24-inch pipe, filling up old shaft and concreting bottom of present working shaft. Total amount, $1192.

Q Do you know to what shaft these items refer-- what particular shaft?

A I do not.

Q Do you know what particular pipe that referred to? Where it was laid? What section of pipe?

A I do not.

Q Do you know what the diameter of the pipe was? Does the account show?

A There was 441 feet of 30-inch pipe and 191 feet of 24-inch pipe.

Q Was that laid in the tunnel? Is this account for pipe laid in the tunnel?

A Pipe laid in the Stowell tunnel.

Q This was in August, 1903?

A Yes, sir.

Q Now proceed with the next. These are all accounts of the Ontario Power Company?

A All of the Ontario Power Company. Here is an account December 1st, 1903, for work done by A. L. McConnel in the month of November, 1903. 60 feet of tunnel, $720.

Q Do you know what tunnel that was?

A It was the Radie or Stowell tunnel and the no. 14 well. Of course, I didn't have charge of the work and I am only believing that that was what the work was. Mr. Leake or the others would absolutely know of the fact.

Q That would be at the rate of $12 a foot?

A Yes, sir.

Q Do you remember whether that was the price at which McConnel was employed to extend that tunnel?

A No.

Q You knew nothing about the making of the contracts?

A No; I knew nothing about the making of the contracts.
January 2, 1904, estimate of work done by A. L. McDonnell for month of December, 1903, tunnel at Stowell shaft, 34 feet at $12, $408.
Q Are you able to describe that piece of work any more definitely than it appears in this account?
A I am not. 13 feet of shafting, $156.
Q What sort of shafting was that?
A I don't know. Total bill, $564.
February 1st, 1904, estimate of work done by A. L. McDonnell for the month of January, 1904, Stowell shaft, 4 feet at $12. New shaft 105 feet at $2.50. Total bill, $510.50.
Q Do you know what that new shaft was?
A I do not.
Here is another bill of A. L. McDonnell, March 1st, 1904, for work done in February, 1904, 344 feet of pipe laid, 100 feet of back filling, filling old shaft and concreting bottom of same, total bill $484.
Q Where was that pipe laid?
A I don't know. I only suppose it was laid in the Stowell tunnel
Q Does it show what sort of pipe it was?
A It doesn't say. 344 feet of pipe laid at $1 a foot.
Q Was that for the work of laying only, or does it include the cost of the pipe?
A It must be for the work only.
Q Proceed.
A April, 1904, estimate of work done by McDonnell for the month of March, 1904, 90 feet of pipe laid, $90. 100 feet back

filling $90. Feb. 14, man and team hauling pipe one day, $4. And a lot of other small items for team work. The total bill amounting to $210. less the amount paid by the San Antonio Water Company, $105., which makes the net bill of the Ontario Power Company $105.

Q Do you know where that work was done?--the work described in that account or statement or voucher for April 1st, 1904?

A I don't know of my own knowledge, but I believe it was done at some portion of the Radie tunnel.

Q Proceed.

A September 10, 1903. This is going a little backwards. Work done by A. L. McDonnell , for laying pipe in shaft, 33 feet at $1., labor of repairing weir, $10. Total bill, $42. May 1st, 1904. Laying pipe, $50. 1 man 1½ days at $2. Total bill, $53. Less amount paid by San Antonio Water Company $26.50, and less amount allowed by McDonnell to complete the job, $2.50. Leaving a net bill of $24.

Q Now referring again to this ledger account kept of the Cucamonga tunnel, July 25, 1903, there is a charge of $5.50 the Cucamonga tunnel is debited in that amount. Does that appear in any of the vouchers you have here?

A It does not.

Q So of the items of August 24, 10.96, and November 25, 1903, 19.50, these vouchers that you have here do not cover anything of those items?

A They don't seem to.

Q Then I will ask you to turn over to the account kept of the Stowell tunnel, which seems to have succeeded this account, on page 54 of your ledger. The first considerable

item here or the largest item after the date that I mentioned a moment ago appearing in this account-- the first is October 16, 1903,--$202.95. Does it appear in these vouchers what that item is for?

A That item does not seem to be in these vouchers.

Q Then October 27, there is $474.30. You have a voucher here for that, I think.

A There is no voucher for that here.

Q In this account these items seem to run from January to October, 1903, then November, 1903, and the items following December 31, although there is no year appearing, are those 1904 items?

A Those must be 1904 items.

Q One would think so from the credits on the other side. They seem to be 1904.

A Yes.

Q Give me those two vouchers which show payments made to McConnell for driving the tunnel or excavating or something of the kind-- 60 feet of tunnel at $12. Then there is another for 12 feet or something of that sort. Probably there are two others. These three are what I more particularly desire to see for the present. Can you find this item of December 1, 1903, of $720, account of McConnell for work, 60 feet of tunnel at $12.?

A That appears on the company's ledger December 31, at page 119, $720, charged to Stowell tunnel.

Q Now the item of August 7, 1903-- it is not an item though. The statement of August 7, 1903, estimate of work done by A. L. McConnell for the month of July, 1903, Stowell ~~tunnel~~

shaft, 81 feet at $4 and 73 feet at $12, and certain pipe laid besides, amounting to $1192.

A. That appears on the ledger of the Ontario Power Company at page 54. $356 of the amount is charged to the Chesnongs tunnel. $480 of that bill is charged to the Stowell shaft and $356. is charged to the San Antonio Water Company.

Q. Then the statement or voucher dated January 2, 1904, tunnel at Stowell well, 34 feet at $12. $408. Then there is an additional item, shaft, 13 feet at $12., making the total $564.

A. I don't find that exact amount charged up to the Stowell well on the ledger. I think that the amount is included with other bills that went through the ledger-- through the journal. But the $156 of that amount was charged to the Stowell well and $408 was charged to the Stowell tunnel.

Q. You don't find the items in the ledger?

A. Not as they appear on the voucher.

Q. Do you know of any other account to which they would probably be transferred or in which they would appear?

A. The voucher itself shows that it was charged up to the Stowell well, $156., and the Stowell tunnel, $408. And in order to actually trace the individual amounts I would have to go through the journal and the other vouchers of the company.

Q. Were these several sums which are mentioned here on these vouchers-- they show that they were paid to McConnell, do they not?

A. They do.

Q. Were those for tunnel construction or shaft construction

by McConnell? They were not repairs, were they? Because you have another account for tunnel repairs.

A There would be another account for tunnel repairs.

Q So were not these for new construction?

A Those, I believe, were for new construction.

Q About that time did you go on the ground to inspect any of the work, that you recall?

A I did not. I might have been on the ground, but I didn't inspect anything.

Mr. Britt: Now these three items here, if you will allow these to remain here-- I haven't any disposition to take them out of your possession permanently, but I may want to use these a little further in the case, and if you will have them in court,-- or Mr. Joliffe may take charge of them,-- and when they have served their purpose they can be returned to your files.

Mr. Joliffe: Mr. Shepherd will remain in attendance of the court.

Mr. Britt: That will be all right.

Q Have you a voucher for the item of March 31, 1904, for $248.78 appearing in the ledger at page 119?

A I believe there is a voucher in the office of the company for every item in this whole ledger.

Q But you don't happen to know what it was for,-- or the next item?

A No, sir; except that it was charged up to the Stowell tunnel.

Q And it was for work of construction?

A I think so.

Q And not for repairs?

A I think not.

Q Now, the construction that was going on at that time was for the purpose of connecting the Eadie tunnel with well No. 14, wasn't it?

A I don't know if this was the particular ~~dxxx~~ work at this date; but I do know that there was a contract with McConnell for the purpose of connecting well No. 14 to the Eadie tunnel.

Q Have you that contract?

A I think I have a copy in the minutes.

Mr. McKinley: Pardon theinterruption. It was not a copy, but it was the original.

(The witness produces minute book of Ontario Power Company.)

Mr. Britt: We offer this contract in evidence, being a contract dated April 20, 1902, by and between A. L. McConnell and the Ontario Power Company, recorded at pages 102, 103, and 104 of Minute Book 1 of the Ontario Power Company. I will state for the information of the Court that it appears to be a contract for continuing the tunnel described to a connection with well 14.

The following is a copy of said contract as the same appears in the said minute book:

CONTRACT, A. L. McCONNEL and ONTARIO POWER COMPANY.

"THIS AGREEMENT, made the 20th day of April, 1902 by and between A. L. McConnel, the PARTY OF THE FIRST PART, and ONTARIO POWER COMPANY, a corporation, PARTY OF THE SECOND PART, WITNESSETH: That the said party of the FIRST part, in consideration of the covenants on the part of the party of the SECOND part, hereinafter contained, hereby covenants with the said party of the second part, that said party of the first part will build and construct in a good and workmanlike manner, a shaft of suitable size for convenient working at well No.14 and also a tunnel three feet wide and four feet high between the present face of Tunnel No.2 and well No.14 a distance of (80) eighty feet. all in Sec. 4 Tp.1 S.R.7 W.S.B.M. on the Cucamonga Rancho, San Bernardino County.

"Work to be prosecuted diligently with three shifts of three men each, and earth excavated to be hoisted and dumped on the surface convenient to present shaft.

"Said FIRST party to furnish all labor, machinery, tools hoists, ammunition, track, engines, boilers, air pipes, blowers and all things necessary for the rapid construction of said tunnel except timbers, lumber and iron necessary to be used in construction of said shaft and tunnel. Said lumber to be delivered at the working shaft by said second party and to be framed and put in place by FIRST party.

"The shaft shall be lined with two inch plank properly spiked with partition as portion heretofore constructed, and if drive lagging has to be used 6"X6" Oregon Pine properly framed shall be used.

"The tunnel shall be lined with two inch lagging upon setts four feet centers of 6"x6" all framed in a good and workmanlike manner similar to work heretofore performed on said tunnel. All lumber to be sound merchantable Oregon Pine.

"Said SECOND PARTY agrees to furnish pump and power and one man to represent said second party and to have charge of said machinery; and said SECOND PARTY agrees to pump out the water at well No. 14 to the grade of said tunnel. Pumps, pipes, connections, meters, belts, and all things necessary for running the same to be furnished in place by said SECOND party. The FIRST party to furnish all labor for lowering and re-setting pump as the shaft is deepened. The price agreed upon for said work is ($960) nine hundred and sixty dollars.

" Said SECOND party agrees to pay said FIRST party for and in consideration of the covenants on the part of said FIRST party hereinbefore contained, for 75% of the work and distance completed on the first day of each and every month at the average rate per foot, which sum shall be due and payable on or before the 5th day of each and every month for work done during previous month. The balance shall be due and paid, thirty five days after the completion of the whole contract,

"Any work which might be reasonably construed as necessary for safety of property of said SECOND party in or about said tunnel, shaft, or machinery, may be done by said second party or shall be performed by said FIRST party, on request of said SECOND party, or its representative, at actual cost of labor and material with 15 per cent. added.

"It is mutually agreed that said SECOND party shall

have the option of extending said tunnel No.2 northerly to the base line on the present surveyed route or such other route as may be mutually agreed upon, in which case the rate per foot for all work done under this contract and on the route as far as the base line shall be figured and paid for at the rate of SIX and 75/100 dollars ($6.75) per lineal foot for tunnel and the same price per foot for each foot in depth for each shaft requiring to be deepened.

IN WITNESS WHEREOF, the said First party has hereunto set his hand, and said Second party hath, by resolution of its Board of Directors, caused its corporate name and seal to be affixed hereto and these presents to be executed by its President and Secretary.

A. L. McDonnel
Party of the
FIRST PART.

ONTARIO TOWN SITES
(Corporate Seal) By T. C. Forckhoff President
By Otto Weiss Secretary.

Q Now, Mr. Shepherd, there was a question here whether the lease between Stowell and the San Antonio Water Company, made in 1896, was in writing. Have you made an examination to see whether you have any such paper?

A I have not.

Q Then there was a subsequent arrangement in 1898. Have you found any written agreement for that year between Stowell and the San Antonio Power Company?

A I haven't looked for that agreement, but I am almost certain that it was a verbal agreement and that there is no contract. But if there is a contract I will have it down here on Monday.

Q Now there was something said about an agreement with Frankish and Stamm about 1898 or '9: was that in writing or have you looked to see?

A I haven't looked to see, but I am quite positive on that also that the San Antonio Water Company simply got a letter from Frankish and Stamm of the Ontario Improvement Company permitting them to pump that well, and that there was no contract. The first arrangement was in '96 and then it skipped over and another was made in '98. That is the way I remember it.

Q There was no agreement other than the letter?

A That is all.

Q Have you that letter preserved?

A I think that letter was burned up when the office was burned a few years ago. All of the old letters were on the outside of the vault and all of our letters previous to that time of the fire have been destroyed.

Q. Yes, sir. Anybody, those who's getting back military, the Lance Infantry a lowlift and tactical mobility. Both company, made 3-2-1?

A. Yes, sir, I believe. Have you been on reconnaissance in the Western Reconnaissance Lance Platoon?

A. I have not.

Q. Then have the a Reconnaissance Management in 1970. Have you been any written instructions for this, your Lance Platoon and the Lance Platoon?

A. I haven't been for some reconnaissance, but I do believe written that it was a verbal agreement that that there is no doubt. But I know this Company will have it here in Korea.

Q. Did there was something that would be terminated with Fenstermaker and Lance Platoon in "71 and that it should be here for Lance? Is that?

A. I haven't heard of that, but I do think politics do that also that the Lance Platoon Company should be a little Lance Platoons and Lance of the Company Reconnaissance Company platoon. That is good idea, but that there was no contract. The first arrangement was in "70 and then it changed here and multiple was made in "71. That is the one I remember it.

Q. There was no agreement other than the letter?

A. That is all.

Q. Have you been letter presented?

A. I think that letter was signed to show the office was based a the Lance Lab. A lot of the all letters were on the authority of the Lab and all of the letters written is just like of a line from Korea.

Q Was this work that was done by McConnell along toward the end of 1903 and possibly early in 1904 done in the carrying out of this contract of April, 1902?

Mr. McKinley: Objected to as calling for the conclusions of the witness.

The Court: The question is whether this work was done under this contract.

Q Probably I can get at it in another way. Let the question be withdrawn. Was that work, the payment for which is evidenced by these vouchers of December 31, 1903, and two others to which your attention was last directed, a part of the work described in the contract of April 2, 1902?

A I haven't any personal knowledge of that fact, only knowing that the bills came into the office and they were paid through the office after being passed by Mr. Locke.

Q Now you mentioned yesterday or the day before that there was a contract between the Ontario Power Company and the San Antonio Water Company regulating certain of their relations, I think for the distribution of water, and you were asked to produce the contract.

A I will produce it but I haven't it here.

Q Where is it now?

A I think it is in the San Antonio Water Company's office.

Q That is one of the papers we requested might be produced, and you will bring it at the next session of the court.

A Yes, sir; the reason I haven't brought down a lot of those papers that you requested was the fact that ~~the~~ I worked till 11:30 to get the data that I did bring down on that 16th Street well, and I thought it was time to quit.

Q I quite agree with you. I will ask you then next to show us the minutes of the proceedings of the San Antonio Water Company looking to the purchase of or acquisition by that company of the stock of the Ontario Power Company. First, the minutes of the stockholders, if there are any, and then the minutes of the directors.

A Minutes of May 8, 1902.

Q Read them and the Reporter will take them down.

A. (Reading)

"Ontario Cal May 8, 1902.

"Special meeting of the Board of Directors of San Antonio Water Co. held on this 8th day of May, 1902, at the Hollenbeck Hotel in Los Angeles, Cal. Present H. T. Lecke, W. B. Stewart, J. T. Lindley. A. P. Harwood and C. Ruedy. Absent, none.

"On motion of A. P. Harwood seconded by C. Ruedy the following resolution was adopted:

"WHEREAS, this corporation has, by virtue of the provisions of a contract, dated April 24th, 1902, between the San Antonio Water Company, party of the first part, Ontario Power Company, party of the second part, Sierra Power Company, party of the third part, and A. G. Kerckhoff, party of the fourth part, entered into certain agreements for the compromise of conflicting claims between itself and the other parties to said instrument; and,

"WHEREAS, among other matters in said instrument provided, it is stipulated and agreed that there shall be an assignment of all the stock of the Ontario Power Company, in said agreement mentioned, to San Antonio Water Company, or such

person as it may designate to hold such stock; and,

"WHEREAS, it now becomes necessary for this corporation to designate some persin to act as its trustee for the holding of said stock, other than the five shares of stock which are necessary to qualify each of the directors in said Ontario Power Company under its by-laws, to-wit, twenty-five shares; therefore

"BE IT RESOLVED, that, W. T. Leeke, of Ontario, in the county of San Bernardino, state of California, is hereby appointed by the San Antonio Water Company to take a transfer of 4975 shares of the capital stock of said Ontario Power Company, and to recive and hold the same as trustee of said San Antonio Water Company; and said Leeke is hereby authorized, until the further order of this board, to vote said stock at any meeting of the stockholders of said Ontario Power Company and to exercise his best judgment in the premises; it being understood that of the 25 shares remaining after the assignment to said Leake as herein provided of said 4975 shares, of the capital stock of said Ontario Power Company, said 25 shares shall be issued in certificates of five shares each to the following named persons, to-wit: B. C. Shepherd and H. Richardson and Robert Manley and L. W. Dyer and Geo. H. Otis, which said persons shall take and hold said stock with the understanding that on request of the San Antonio Water Company to them or either of them at any time made they and each of them will transfer and assign said stock by each of them so respectively held on receipt of $5.00 for each certificate of five shares to the said San Antonio Water Company or such person or persons as it may designate. It being understood that said stock

shall not be incumbered or alienated by any of said parties until they and each of them have first given said San Antonio Water Company the opportunity to purchase the same at the price and as hereinbefore provided.

"Ayes: Messrs Harwood Lindley Tuecy Stewart & Locke.

"Noes: None.

"The following resolution was adopted on motion of J. T. Lindley sec. by A. D. Stewart:

"Resolved That it is the sense of this board of Directors that upon the assignment to A. T. Locke of the 4975 shares of the Ontario Power Co. mentioned in the previous resolution That said A. T. Locke should be appointed by the Board of Directors of said Ontario Power Company as the General Manager of said Power Co. for the term of five years from his appointment as such and that a contract should be entered into between said Power Co. and said A. T. Locke covering said term and providing that the full management of the business and affairs of said Ontario Power Co, outside only of the routine business of the Board of Directors of said Company, be committed to said A. T. Locke at such compensation for his services as such manager as may be agreed upon for said term between said A. T. Locke and said Board of Directors.

"And it is further hereby Resolved that the Trusteeship created by the preceding resolution as to the 4975 shares of stock shall continue in any event during the said term of five years during when said Locke shall act as Manager for said Ontario Power Co. and for such other term as he may act as

such manager, and that said trusteeship shall not in the meantime be recalled or revoked by any act or Resolution of the Board of Directors of this Corporation.

"Ayes: A. F. Harvey, J. T. Lindley, C. Ruedy, A. E. Stewart and T. E. Locke.

"Noes: None.

"The following resolution adopted by unanimous vote:

"Whereas by a certain contract dated April 24, 1907, it was provided that th Ontario Power Co. therein mentioned should construct a line of pipe and conduit through Sec. 1 & Sec. 12 & 13 (above division dam so called) to a power house site on Sec. 13 and whereas it has been to the interest of said Ontario Power Company that said work should not be delayed until the final carrying out of all the provisions of said contract and wherever this corporation to facilitate the said construction have advanced and will advance the funds necessary to carry on said construction until such time as said Ontario Power Co. is in a position to itself assume the entire cost of said construction, as in said contract provided, to-wit: until the transfer of said stock of said Ontario Power Co. to this corporation as in said contract provided: Now Therefore be it Resolved that said money so advanced and to be advanced as aforesaid has been advanced and will be advanced as hereinbefore sated with the expectation and understanding on the part of this corporation that said sum shall be repaid to it by said Ontario Power Co. as soon as it is in a position to make such repayment.

" The minutes of meetings held Feb. 4th, 13th, 16th,

March 5, 21st, 27th, April 12th, 17th, 24th and May 6th read and approved. Adjourned.

"Married" W. C. Shepherd

Sec.

Q At that time, was that stock mentioned, the 4975 shares, issued by the Ontario Power Company to Mr. Leeke as trustee? Do your books show?

A I think it was transferred at that time.

Q Is there any resolution of either stockholders or directors of the San Antonio Water Company appearing of record in any of these books before May 8th, 1902, on the subject of acquiring the stock or the business, or the property of the Ontario Power Company?

A I find that on April 17, 1902, on page 164 of the minutes of the San Antonio Water Company the following record:

(Resolution Appointing W.T.Leeke Trustee to Hold Ontario Power Company Stock).

(San Antonio Water Company Minutes, April 17, 1902. Page 164)

"Ontario, Cal., April 17, 1902.

"Special Meeting of the Board of Directors of San Antonio Water Co., held on the above written date at 3 p.m.

"Full Board present.

"Moved by J.T.Lindley, Sec. by A.P.Harwood that W.T.Leeke is hereby appointed to act as trustee to hold the stock of Ontario Power Co. about to be purchased by San Antonio

Water Co.; and for such other purposes as may be appurtenant.

"Carried unanimously."

A I think that was the first.

Q Is there anything subsequently to those resolutions which you read a few minutes ago pertaining to the same subject?

A There is. April 24, at page 170, there is a special meeting of the Board of Directors of the San Antonio Water Company which referred to those matters.

Q What business was transacted then as appears from the minutes?

A (Reading)

(Minutes of San Antonio Water Company, April 24, 1902, as to Transfer of Ontario Power Company interests to San Antonio Water Company. Page 170, Minutes)

"Ontario Cal April 24th 1902 -

"Special Meeting of the Board of Directors of San Antonio Water Co. held on the above written date at the office of the San Gabriel Electric Co. in the City of Los Angeles

"Present Messrs. W.T.Leeke, W.B.Stewart, J.F.Lindley A.P.Harwood and C. Huedy

"Absent - None.

"The following resolutions were adopted by unanimous vote:

"At a meeting of the Board of Directors of the San Antonio Water Company held this 24th day of April, 1902, at which all the Directors of said corporation were present,

a resolution to the following effect was offered by J.T. Lindley, seconded by W.B.Stewart, that this Board approve all the provisions of the contract dated this day, between the San Antonio Water Company party of the first part; Ontario Power Company, party of the second part; Sierra Power Company, party of the Third part; and William G. Kerckhoff, party of the fourth part, which said contract is in the words and figures following, to-wit:-

"THIS MEMORANDUM, made this 24th day of April, 1902, by and between the SAN ANTONIO WATER COMPANY, a corporation duly organized, existing and doing business under the laws of the State of California, party of the first part, and ONTARIO POWER COMPANY, a corporation duly organized, existing and doing business under the laws of the State of California, the party of the second part, and the SIERRA POWER COMPANY, a like organization organized under the laws of the State of California, party of the third part, and WILLIAM G. KERCKHOFF of the County of Los Angeles, State of California, party of the fourth part, WITNESSETH:-

"WHEREAS, the parties hereto respectively except said W. G. Kerckhoff claim certain interestes in and to the use of the waters of the San Antonio Creek, a stream rising in the mountains north of the colony on Ontario, and running thence in a southerly direction through the San Antonio Canon, so-called, onto the plain below said mountains, which said stream lies partially in San Bernardino County and partially in Los Angeles County in said State, which said claims of said parties respectively are in many respects conflicting; and,

"WHEREAS, there is a difference of opinion between the said Sierra Power Company and the San Antonio Water Company as to the location of certain section lines involving the title to the land occupied by said Sierra Power Company for power purposes; and,

"WHEREAS, there are other differences between the said corporations; and,

"WHEREAS, further, it is desired by all the parties hereto to adjust the differences existing between them, in regardx to the rights to the use of the flow of said stream, for power purposes, and their differences as to the location of the said section lines above referred to, to the end that litigation may be avoided, and the claims of the respective parties finally settled and adjusted; now, therefore,

"KNOW ALL MEN BY THESE PRESENTS: That the parties hereto respectively agree, for the purpose of effecting said settlement and adjustment of their respective rights and differences, as follows, to wit;

"1. The party of the first part and the party of the second part herein covenant and agree that they will, upon demand, convey to William G. Kerckhoff, or to such person or corporation as he may indicate, all their right, title and interest in and to the right to use the flow of said stream for power purposes, north of the southerly line of Section 36, in Township 2 North, Range 8 West, and at any and all points on said stream in Township 2 North, Ranges 7 and 8 West, all San Bernardino Base & Meridian; and a right of way for road to furnish convenient means of ingress and egress to said lands north of said section over

Sections 1, 12, 13 and said Section 36 hereinafter described.

"2. It is further stipulated and agreed that the Ontario Power Company, the party of the second part, shall procure to be executed a transfer of all its capital stock, to wit, Five Thousand (5000) shares thereof, to such person or persons as may be indicated by said party of the first part to receive said assignment of stock, contemporaneously with the transfer, conveyance and releases herein contemplated to be made by party of the first part to William G. Kerckhoff, or to such person or corporation as may be indicated by said William G. Kerckhoff, as hereinabove provided, it being understood that the property of the party of the second part is now subject to a bonded indebtedness of Fourt Hundred Thousand Dollars ($400,000) payable, according to the terms of said bonds, thirty years from the date thereof, and bearing interest at the rate of five (5) per cent perannum payable semi-annually.

"It is further stipulated and understood that at the time of the transfer of said stock the said Ontario Power Company shall be absolutely out of debt, save and except for the issue of bonds hereinabove referred to. The interest to begin on the outstanding issue of said bonds to the amount of $380,000.00 from the 4th day of May, 1902.

"It is furthermore agreed and understood that, at the time said transfer is effected of said stock, the said Ontario Power Company, party of the second part herein, shall be the owner of the following described real and personal property, to wit:

"First. Section 1, Township 1 North, Range 8 West, S.B.M.,

reserving however so much thereof as may have been conveyed to J. M. Elliott as a reservoir site subject to the rights of way in said deed to J. M. Elliott for a transmission line; and rights of way for a road to furnish convenient means of ingress and egress over Sections 1, 12 and 13.

"Second. Section 25, Township 2 North, Range 8 West, S. B. M., excepting however therefrom so much thereof as may have been conveyed to J. M. Elliott for a power-house not exceeding five (5) acres, and reservoir sites, and subject to such easements and rights of way as may be conrained in said deed dated the _____ day of _____, 1902: reserving furthermore, that certain tract of land estimated to contain five acres of land conveyed to William G. Kerckhoff by deed dated the _____day of April, 1902.

"Third. Lots in Trust Deed. Part of Section 4. See Certificate of title #16182 - - - 262 Acres

Lot 4, Sec. 9 Township 1 S. R. 7 W. S. B. M.		
" 1-2-3-4-, Sec. 8, Township 1 S. R. 7 W. S.B.M.		100 acres
		362 A., C.F.L.Co.
Lots 245-6-7-8-271-2-3-4-5-309-10-11-12-13-14	150 Acres	380 A., Stamm
" 337-8-9-340-1-2-3-347-8-9-350-373-4-5-6-	150 "	
" 385-6-7-8-411-12-13-14-	80 "	
" 166-7-8-205-6-7-8-9-10-11 240-1-2-3-4-	150 "	560 A., Frankish
" 276-7-8-9-280-1-2-301-2-3-4-5-6-7-8-315	160 "	
" 335-6-344-5-6-377-8-9-380-419-420-1-2	130 "	1302 A.
" 441-2-3-4-5-6-7-8-467-8-9-470-	120 "	

"All in Ontario Colony lands.

"Also Block no. 20 of the Cucamonga Homestead Association Tract, as the same is shown upon a map of said tract re-

co

corded in the Official Records of San Bernardino County, saving and excepting Lots 11 and 12 thereof, and all wells, tunnels, shafts and water developments now on said lots, m blocks and land mentioned, and all water flowing or being therein; save and except the 150 inches measured under a four inch pressure arising on said tract and belonging to said San Antonio Water Company, which said water is expressly understood and stipulated to be in no way covered or affected by any of the terms of this agreement; and save and except further such rights, if any, as are reserved in a certain contract dated April 8, 1899, between the Cucamonga Fruit Land Company and the San Antonio Water Company, which said contract is of record in the office of the County Recorder of said San Bernardino County. It is further understood and agreed that the tunnel running diagonally across the ninety acre tract so-called and all rights connected therewith shall also be owned by said Ontario Power Company at the time of the transfer of said stock except such rights in said tunnel as are owned by said San Antonio Water Company and the Cucamonga Water Company.

"Fourth. All rights acquired by party of the second part from A. M. Chaffey, or otherwise, to the use of the water flowing on or through sections 12 and 13, Township 1 North Range 8 West S.B.M. for power purposes or otherwise, especially to include any rights acquired by party of the second part or its predecessors in interest under and by virtue of the terms of a certain decree entered in that certain action entitled San Antonio Water Company vs. Ontario Land and Improvement Company et al., No.5064 of the files of the Superior Court of San Bernardino County.

"FIFTH. The following transformers, meters, wires and poles, the same being the lighting and power system of The Ontario Electric Company, a corporation, beginning at the switch board in the power station and running to the towns of North Ontario and Ontario, and the distribution lines in these two towns. The said list is approximately correct and is now installed upon the ground. The same shall not be considered to include any of the poles or wires necessary or now used for the operatuob of the railway system upon Euclid Avenue."

Mr. Britt: As far as any detail of this electrical plant is concerned, unless counsel on the other side desire to have it read, I think we might omit it.

Mr. McKinley: We do not care for it.

(Matters omitted being a list of transformers installed, light meters installed, wires and poles).

"It being understood that there shall be in the hands of and owned by the said Ontario Power Company at the time of transfer of stock as herein provided, all poles, wires, lines, tools, implements, appliances and appurtenances, and all existing contracts for lighting purposes in the territory hereinafter specified as territory within which the Ontario Power Company shall be entitled to do business in the furnishing of power for lighting and general purposes.

"Sixth. One Hundred Thousand Dollars ($100,000), cash in bank, subject to check of party of the second part.

"Seventh. A contract and lease, made and executed by the

San Antonio Water Company as party of the first part, to the Ontario Power Company as party of the second part, leasing for the term of thirty (30) years, and until said bonded indebtedness is finally liquidated, a tract of land of about five acres situated in Section 13, Township 1 North, Range 8 West, S.B.B., upon which a power-house is to be constructed, by party of the second part; said lease also demising and letting unto the party of the second part therein the right to divert the waters of the San Antonio Creek from Section 1 above described through said Sections 1, 12 and 13, to be applied by party of the second part to the generation of power at the said power-house site above referred to. Also leasing rights of way for the construction and maintenance of a conduit over said sections 12 and 13.

"Eighth. Contract with William G. Kerckhoff, or with such person or corporation as he may indicate for the purchase of surplus power, as more particularly described and set forth in paragraph nine (9) of this agreement.

"NINTH. Contract by party of the first part and party of the second part to the following effect, to-wit;- That party of the second part, the Ontario Power Company, will turn over its entire net income to the Union Trust Company of San Francisco, Trustee under the bond issue hereinbefore referred to, to an extent sufficient to satisfy payments of interest on said bonds as they fall due, and sufficient to meet the payments of installments of principal for sinking fund as hereinelsewhere provided, as they may fall due, and that should there be any deficiency between the amount of the total net income of said Ontario Power Company and the

amounts required by said Trustee for the payment of said installments of interest, Trustee's charges and sinking fund, in such event the said San Antonio Water Company, the party of the first part shall agree and be held and bound to see that such deficiency is paid into the hands of such Trustee in time to make the said payments of interest and installments on sinking fund promptly when due.

"It is understood and agreed that titles to the real and personal property above described are to be held by the Ontario Power Company at the time of transfer of stock, free and clear of all incumbrances except the bonded indebtedness above described; and further, subject to the easements that may be set forth in the deeds above referred to and as herein provided, and subject moreover to such reservations of rights of way for pipe lines and roads, as may exist of record and are shown upon the official records of the County of San Bernardino, California, against the property described in said subdivision Third hereof, it being understood that said property described in said subdivision Third is not encumbered by any agreement to dell or develop water except only however the 130 inches of water of the San Antonio Water Company next hereinafter mentioned.

"It is further agreed that no incumbrances by way of mortgages, deeds of trust, attachments or judgments, or incumbrances involving money, shall exist against said properties; and subject, moreover, to taxes for the fiscal year 1902-3; otherwise to be free of any lien for payment of delinquent taxes; and subject moreover to the conveyance heretofore made, conveying to the San Antonio Water Company

130 inches of water in the lands above described, which said conveyance is now of record in the recorder's office of San Bernardino County.

"3. For the purpose of creating the asset enumerated in No.7 in the foregoing schedule of the party of the first part, it is hereby covenanted and agreed that it will, at the time of the execution of the instruments herein referred to, all of which said instruments on the part of the parties hereto are to be effected contemporaneously for the purpose of carrying into effect this contract, execute and deliver to the party of the second part an instrument of lease and contract, wherein and whereby said party of the first part will lease and let, for the term of thirty (30) years to the party of the second part, or until said bonded indebtedness is finally liquidated, that certain tract of land estimated to contain five acres, more or less, situated in Section 13, Twp. 1 North, Range 8 West, S. B. M., upon which the party of the second part now proposes to construct a power-house. And the said indenture of lease and contract shall likewise grant the right to the party of the second part, for the term of thirty (30) years, or until such bonded indebtedness is finally liquidated, to divert the waters of said San Antonio Creek, flowing over and through Sections 12 and 13, Township and Range aforesaid, into any other conduit and system of works that the party of the second part may construct, beginning on the north line of Section 1, for the purpose of conducting the same to the power-house site above referred to, for the generation of electric power thereat; and shall furthermore lease a sufficient right of

way for the construction, operation, maintenance, and repair of the conduit for carrying the waters to be diverted on Section 1 through said sections 12 and 13 to said power-house site. It being the intention of said instrument to turn over and lease to the party of the second part for the term aforesaid the right to use the waters flowing over and through sections 12 and 13, now owned by the party of the first part, to be used in con ection with the waters flowing over and through Section 1 now owned by party of the second part, to effect and form one complete system for the generation of power, to be controlled by the party of the second part.

"4. For the purpose of creating the asset enumerated in No.9 of the foregoing schedule, and as part of the essence of this contract, it is furthermore covenanted and agreed that parties of the first part and second part shall make a contract to the following effect, generally, to-wit:- That party of the second part, the Ontario Power Company, will turn over its entire net income to the Union Trust Company of San Francisco, Trustee, under the bond issue hereinbefore referred to, to an extent sufficient to satisfy payments of inte rest on said bonds as they fall due, and sufficient to meet the payments of installments of principal for sinking fund as hereinelsewhere provided, as they may fall due, and that should there be any deficiency between the amount of the total net income of said Ontario Power Company and the amounts required by said Trustee for the payment of said installements of interest, Trustee's charges and sinking fund, in such event the said San Antonio Water Company,

the party of the first part shall agree and be held and bound to see that such deficiency is paid into the hands of such Trustee in time to make the said payments of interest and installments on sinking fund promptly when due.

"The sinking fund hereinbefore referred to shall be created as follows, to-wit:- On the expiration of five years from January 1st, 1902, payments upon said sinking fund shall begin in the amounts and in the manner following to-wit:- Party of the second part shall then and for fifteen years thereafter, including said first payment, pay annually to said Trustee, The Union Trust Company of San Francisco, two per cent. of the principal of all of said bonds outstanding each year and for the succeeding five years thereafter three per cent. of said principally annually.

"It is further understood and agreed that, when under the provisions of said trust deed there is sufficient money in the hands of said Trustee, by reason of said sums of money so deposited by party of the second part, and the accumulations of profit or interest on the investment of, or accruing from said sum an amount sufficient to liquidate the principal of said bonds, Trustee's charges and all interest due or to grow due, no further payments shall be made but this shall not be construed to mean that said bonds shall be called in or retired before the date of their maturity, except by an agreement between said bondholder and said corporation. And if at the expiration of said term of thirty years there shall remain in the hands of said trustee any sum or sums of money over and above an amount sufficient

to pay the principal, Trustee's charges and interest of said bonds, the same shall forthwith be paid over to said Ontario Power Company, its successors and assigns. It is understood and agreed that the party of the second part shall be called on to pay only the customary charges of the said trustee for his services that may accrue after the transfer of stock herein provided to be made.

"It is furthermore understood and agreed that the party of the second part shall acquire from the Ontario Electric Company, before the transfer of the stock hereinbefore provided to be made, a license irrevocable during the life of said franchise, to use the franchise or franchises owned by the Ontario Electric Company for the carrying on of the business of lighting and use of power for other purposes within said territory and of maintaining transmission lines and other appliances for said purposes as in said franchises described or contemplated; in addition to the conveyance of said license, the party of the second part shall at the same time be likewise the owner of what is known as the distributing system, including all transmission lines, transformers, and other machinery necessary to conduct said lighting business and mentioned in the schedule, subdivision No. 5.

"6. It is hereby stipulated and agreed that, of said $400,000 issue of bonds, the party of the second part shall, contemporaneously with the transfers herein contemplated and provided for, procure the sum of $20,000 thereof, to be regularly and duly withdrawn, destroyed and cancelled, to the end and effect that the total bond issue outstanding

shall not be $400,000, but shall be the sum of $300,000.

"7. It is hereby further stipulated and agreed that said second party shall have undisputed right, to wit, such rights as it has as owner of Section 1, and such rights as it has by virtue of its leasehold interest in Section 12 and 13, to use all power generated from the waters of said stream, as the same flows, or may flow, through the said Sections 1, 12 and 13m hereinbefore referred to, and above the division dam on said Section 13 for lighting, power, and any other purposes in and over the lands of the Ontario Colony, to-called, and lands adjacent thereto, which said lands and boundaries of said tracts referred tom are particularly described as follows, to wit:

"Beginning at the inters ection of the range line between Townships 1 and 2 South, with the County line between Los Angeles and San Bernardino Counties; thence East along said township line to the Southeast corner o Sec.33 Twp. 1 S., R. 7 W.; thence North on Section lines to the N.E.corner of Section 21; thence West to N.W.corner of Section 21; thence North on section lines to San Bernardino base line; thence East to Southwest corner Cucamonga Homestead Association Tract; thence following the Westerly line of the Cucamonga Homestead Association Tract to the North line of Cucamonga Rancho; thence West along the North line of Cucamonga Rancho to the Northwest corner thereof; thence Southerly along the Rancho line to the intersection of the Section line between Sections 23 and 24 Twp. 1 S. R. 8 W.; Thence South along Section lines to the Santa Fe Railroad; thence Westerly along the Santa Fe Railroad to County Line

thence Southerly along county line to place of beginning.

"8. The said first party shall further have the undisputed right, so far as the second party, its successors or assigns, or said Herckhoff, his successors or assigns, are concerned, to utilize the said power only for the pumping of any wells or water developments owned (controlled or operated), by said first party, whether the same are within said boundaries of said tract last described or not, or wherever the same may be situated.

"9. It is further stipulated and agreed that the party of the second part will contract to deliver to any corporation hereafter to be formed, or to any person who may be nominated for such purposes by William G.Herckhoff of the City of Los Angeles, County of Los Angeles, State of California, the surplus power of said second party as hereinafter defined, to be delivered at power-house; and in said contract the said William G. Herckhoff, or such person or corporation as he may indicate, shall control or agree to buy all the surplus power derived from the power developed, or to be hereafter developed, from said stream as it flows through said Sections 1, 12 and 13 above said division dam, over and above that needed, used or required by said San Antonio Water Company for the purposes herein specified, and over and above that needed by the Ontario Power Company for the general purposes hereinbefore specified, and as hereinbefore specified for the perior of ten (10) years, at the following rates, to-wit:-

"It is mutually understood and agreed that the amount of the payment for the surplus power shall be determined

at the option of the Ontario Power Company as follows:-

"First: All items going to make up the cost of the power, shall be considered to be:

"(a). Interest upon the cost of the plant from the intake in Section 1 to the switchboard, which sum it is agreed shall be held and considered as not less than $100,000, irrespective of the fact that the actual cost may be less than said sum, and whatever additional amount may be in fact expended above $100,000. Party of fourth part to be shown and allowed to examine vouchers for such expenditures. Interest upon this shall be figured at five per cent.

"(b). Operating labor shall include only the men actually employed in the attendance upon the machinery and pipelines, and $50.00 per month toward wages of superintendent; and it is agreed that their wages shall be the usual average rate for like services in like employments.

"(c). Maintenance. This shall include the repairs necessary to keep the plant in first class condition, but shall not be construed to include any additional plant, but shall include all necessary or proper replacements. If additional plant is installed, the amount for the cost of the additional plant and installation shall be added to the amount upon which the interest is to be paid.

"(d). Insurance and Taxes. The measurement of power shall be made by meters placed upon the switchboard and reading in kilowat hours; one meter or set of meters shall be upon the surplus power lines, and one meter or set of meters upon the lines furnishing power to the Ontario Power

Company or the San Antonio Water Company. The sum of 1/12 of "A," all of "B", all of "C", and 1/2 of "D," shall be considered the total cost of the power for each calendar month. This sum divided by the total kilowatts shall be considered the cost per kilowatt hour of the power generated for that month. The amount of power shown by the surplus meters, shall be the amount of surplus power for which payment is to be made. The amount in kilowatts of the surplus power shall be multiplied by the cost per kilowatt of the total power, and to this shall be added for the months of July, August, September and October, 20% for profit to the Ontario Power Company, and for the remaining eight months in the year, there shall be added 10% for such profit.

"Second: In the event that reservoirs are established so the power can be furnished wholly between the hours of 6 A. M. and 12 midnight following, and the Ontario Power Company decides to accept the alternative proposition, the calculation as to cost shall be as last hereinbefore stated, and the profit added for the four months of July, August, September and October, shall be 25%, and for the remaining eight months, 15%.

"To illustrate the first method, --"

Mr. Britt: That illustrates the method of adjusting.

A Getting at the cost of the surplus to be charged up to Kerkhoff.

Mr. Britt: That may be omitted, and a parenthetical note being made that the illustration of the manner in which

the cost of power generated is charged up to Merckhpff is omitted.

Mr. Britt: The entire discussion about the management of the electrical part of the business of the Ontario Power Company, we are willing should be omitted.

Mr. McKinley: We consent.

(The description of particulars of the management of the electrical business of the Ontario Power Company is here omitted from the reading by consent.)

Mr. Britt: I think all of that might be omitted as far as paragraph 11, at page 187 of the minute book, unless Judge Gregg wants it read. If so we have no objection.

Mr. Gregg: The paragraph seems to refer to the rendition of bills and accounts for the surplus power from month to month, and for provisions that if payments are not made by Mr. Kerckhoff in accordance with the provisions, that the contract shall be abrogated and declared null and void.

Mr. Britt: Proceed to the next paragraph.

Witness: (Reading) It is furthermore understood and agreed that all conveyances relinquishments or quitclaims made by said party of the first part to said party of the second part, or any rights to the use of power in said stream north of the south line of said section 36 shall be understood to be made subject to the lien of an issue of bonds now outstanding of said party of the first part, which said bonds cover all of the property of the said party of the first part.

11. It is further understood and agreed upon the receipt of the said sum of one hundred thousand dollars which will pass to party of the second part by reason of the assignment of the five thousand shares of stock of the Ontario Power Company hereinbefore specified, the party of the second part will at once apply said sum or so much thereof as may be necessary for the construction of a power house, and the construction of ditches, conduits and pipe lines

(The Secretary of Public Works of the Government of the Electrical Business of the Modern Power Company. It have called from the Wednesday morning.)

Mr. Davies: I think all of that should be matters as far as possible at, on page 227 of the agenda book, which Dave Davies wrote it read. If he be here to elaborate.

Mr. Chair: The Secretary read to order in the position of Bills. We consider the Bills Power Act. Then would it mind, and for provisions that if payment are not made by Mr. Bernhardt in accordance with the provisions, then the contract shall be abrogated and Bylaws shall not exist.

Mr. Bylin: Proceed in the usual manner.

Witness: Chairman! It is Parliament authorized the Minister that all contractors participation or obligation made by and a party of the first part to said party of the second part, on any rights in the use of power in said areas north of the south line of said section 34 shall be considered to be made subject to the line. If on lieu of [illegible] one-fifth ownership of said party of the first part, which said [illegible] shall of the property of the said party of the first part.

Mr. It is further understood and agreed upon the [illegible] of the said use of an Electrical Business Bylaws which will come to a vote of the second part by reason of the adjacent of the line through lands of road of the Modern Power Company Inclusive operation, the part of the second part will at some right said use to be said Electrical as may be necessary for the construction of a power house, and the construction of lines, poles and wire lines

for the diversion of the water of said San Antonio Creek in said section 1, ~~thence~~ to said power house for the generation of electrical power over said sections 1, 12 and 13.

12. It is further understood and agreed that with reference to the powerhouse sit or that certain three-acre tract of land conveyed by deed dated _____ recorded in the office of the County Recorder of Los Angeles County in Book _____ page _____ of deeds thereofany further assurances of title that may be necessary to remove any doubts as to the true location of said three acre tract, to the effect that the same shall not be within section 1, or that the south boundary line thereof shall be coincident with the boundary lines between sections 36 and 31, shall be made by the first and second parties, in so far as any title now held by either of said parties is concerned.

14. It is further herein stipulated and agreed that two certain actions now pending in the Superior Court of the County of Los Angeles, State of California, towit: an action brought by the said party of the first part against the Ontario Light and Power Company et al, for the purpose of condemning a right of way over said section 1 and for condemning a riparian right in said section 1; and the other action brought by said Sierra Power Company against the said first party to enjoin said first party from blasting for the purpose of constructing its ditch from sections 12 and 13 hereinbefore mentioned, shall each be respectively dismissed at the cost of the respective plaintiffs therein.

15. It is further expressly understood and agreed between the parties hereto that, whereas there are certain cienegas and spring lands along the line of and near the banks of said San Antonio Creek and tributaries of Section One; and whereas the same are necessary and valuable reservoirs for holding a large part of the water naturally flowing through the channel of San Antonio Creek in a constant, though small flow, or percolation, and are therefore valuable for the purpose of sustaining the even flow of said stream, nothing shall be done by said William G. Kerckhoff, or the person or corporation to whom he may assign the rights and interests he may acquite under this contract, in the way of development of water, or in the digging or running of trenches, shafts or tunnels upon the said cienegas or spring lands, for the purpose of developing water thereon and securing a more rapid emptying into the bed of said creek, than that which would occur through the natural seepage and contribution of said cienegas and spring lands to said stream.

16. It is further understood and agreed between the parties hereto that the party of the firstpart, notwithstanding anything hereinbefore set forth or contained, shall have the right to divert over section 36, if it shall so desire, a certain stream being a tributary to said San Antonio Creek, and entering said creek in the westerly banks thereof, near the lower or southerly portion of said section 36, and the upper or northerly portion of said section 1, so that the party of the first part and party of the second part may have the benefit of said stream for power purposes; but the present proposed line of diversion shall be abandoned, and the trench

filled, and cement floor repaired by party of the first part and thereupon all claim for damage or right of action against party of first part shall be deemed abandoned, and a new line of diversion shall be selected by Mr. Newman and Mr. Sanders, engineers, which said new line shall be sufficient and adequate to divert said waters and to carry them into and above the diversion works of the party of the second part, to be constructed on section 1, to the end and effect that the said waters of said small stream shall enter into the San Antonio Creek, or said diversion works of the party of the second part, to be utilized for the power purposes in its system. Nothing shall be construed by this last clause to call upon first party to change its point of diversion; this shall only apply to the line of diversion.

14. If, within five years from the date hereof, the said William G. Kerckhoff, or any person or corporation which may be the successor in interest of his rights hereunder, should desire a right of way for the extension of the present street cary system to what is known as Stoddart's canon, the party of the first part will, within ninety days after a written request has been served, caused to be conveyed a right of way over its lands for the purpose of constructing and operating said extension, which conveyance shall contain such restrictions and conditions as may be necessary to protect the lands over which said right of way may be granted, and shall not be required for more than a width necessary for the operation and maintenance of one track and necessary turnouts and switches; the dimesions of said right of way to be fixed and defined at the time of said grant.

15. The party of the first part also covenants and agrees

that it will, by proper instrument, reaffirm the present existing power rights now or formerly held by the said San Antonio Heights Railway Company, and by the Ontario Electric Company, below the diversion dam so-called on section 13, subject, however, to such limitations as now exist, which said limitations shall be specifically enumerated in said instrument of affirmation.

19. It is furthermore understood and agreed that the party of the first part will grant permission to said William G. Kerckhoff, or such person or corporation as may be the successor in interest hereunder, to move and change the location of the present power-house (formerly belonging to the Ontario Electric Company) from its present location to a point lower down in point of altitude, towit, to a point between twenty-second and twenty-third Streets, as shown upon a map of Ontario Colony lands; provided that, as a condition precedent to said change of location, the change in said location shall not alter the present system of the distribution of water for irrigation and other purposes, and that any change in pipe systems of first party, to maintain its present system of distribution, shall be made by said Kerckhoff, or his assigns, not only at his and their sole charge, cost and expense, but shall be done in such a manner as not to vary or alter the present method of distribution, or in any way impair, infringe upon, or affect directly or indirectly any vested rights to the water or waters of said San Antonio Creek or the tunnel water so-called and hereinafter mentioned for irrigation or other purposes, or the method of distribution of the same for

that it will, by proper instrument, reaffirm the present existing power rights and be formally held by the Canadian Niagara Hydro-Electric Company, and by the Ontario Electric Company, below the diversion dam so-called on section 13, subject, however, to such limitations as now exist, which said limitations shall be specifically enumerated in said instrument of affirmation.

IV. It is furthermore understood and agreed that the party of the first part will grant permission to said William G. Ferdinoff, or such person or corporation as may be the successor in interest hereunder, to move and change the location of the present power-house (formerly belonging to the Ontario Electric Company) from the present location to a point lower down in point of altitude, that is, to a point between twenty-second and twenty-third streets, as shown upon a map of Ontario Colony lands; providing that, as a condition precedent to said change of location, the course in said location shall not alter the present system of the distribution of water for irrigation and other purposes, and that any change in pipe systems of first party, to maintain the present system of distribution, shall be made by said Ferdinoff, or his assigns, not only at his and their sole charge, cost and expense, but shall be done in such a manner as not to vary or alter the present method of distribution, or in any way impair, infringe upon, or affect directly or indirectly any vested rights to the water or waters of said San Antonio Creek or the tunnel water so-called and hereinafter mentioned for irrigation or other purposes, or the method of distribution of the same for

irrigation or other purposes, now owned or held by said San Antonio Water Company, and that said Kerckhoff and his assigns shall, at their own cost and expense make and construct all pipe lines, sand-boxes, diversion boxes, water gates, and all other appliances and means necessary to fully and properly enable the party of the first part to effect the distribution and carrying of said water under the system now in operation; and that all such changes and constructions of said sand-boxes, diversion-boxes, water -. gates. appliances and means last hereinbefore mentioned, shall be constructed and made subject to the approval of the engineer of the party of the first part.

It is further understood and agreed, however, that the tunnel water, so-called, being the water now flowing from the tunnel on sections 24 and 13, Township 1 N, Range 8 West, S. B. M. and being near the bed of San Antonio Creek and flowing from said tunnel into the present main pipe line of said San Antonio Water Company, shall continue to run and flow therein without obstruction or hindrance and shall be distributed therefrom under the present system of distribution, and that the Mountain Avenue pipe line, so-called, shall be extended in a northerly direction to connect with the said proposed new pipe line by a gate or other suitable appliance for controlling the water at such point of connection.

And it is further agreed that the San Antonio Heights pressure pipe line, so-called, shall, in the event that the supply from the said tunnel is insufficient to supply the requirements of said pressure pipe line

upon notice of requirement to construct said extension and connection, party of the fourth part shall within five days, complete such extension and connection so as to connect said pipe line at the nearest practicable point with said proposed new pipe line, so that said pressure pipe linne may be continue to be operated therefrom in the same manner and under the same right as now operated, enjoyed or claimed in connection with the present pipe line, and to any extent necessary for future use, said extension, however, to be restricted to the tract above and north of Twenty-second Street in said Ontario Colony lands, and no rights of any kind in or to the use of said pressure pipe line and the water flowing therein be held to be or in fact be waived, altered, varied or lessened in any way by reason of the connection having been made with said proposed new pipe line, or after said connection has been made be in any way different or otherwise from what the same are now.

It is further agreed that, in event of the changes herein contemplated, a gate shall be placed and constructed on the proposed new pipe line at a point near the old division box, that is to say, the division box now in use at the time of the execution of this contract, and located on block 8 of the San Antonio Heights Tract, and said San Antonio Water Company shall have the right to take at said point where said gate is constructed sufficient water flowing past said division box to supplement the flow of tunnel water, so-called, and hereinbefore referred to, in the event that said tunnel water shall below 100 inches meas-

ured under a four inch pressure, or shall fall below a sufficient amount to irrigate and supply with water to the same extent that they are now or may hereafter need to be supplied, lands under the flow of said division box and above the said proposed new distributing system; it being fully understood and agreed that said San Antonio Water Company shall have at all times complete control of all gates and connections constructed for the purpose and to the ends hereinbefore set forth and pertaining to the present distributing system or any distributing system that may be hereafter constructed in pursuance of the terms of this agreement, and the said San Antonio Water Company shall be the sole judge of the necessity of taking water from said gates and said connections, it being understood, however, that it shall exercise its said rights in good faith and only when it appears to said San Antonio Water Company that it is necessary to use the same.

It is further understood that all extensions, alterations or changes, and all construction of gates, connections or new pipe lines required or proper to be made by reason of the proposed change in the location of said power house shall be made at the sole cost and expense of said Kerckhoff, or his assigns, and that the said San Antonio Water Company shall be put to no expense or outlay whatever in the premises and shall be held free and harmless from any liability therefor. Said change being made purely for the benefit and advantage of said Kerckhoff and those represented by him, and being consented to by the San Antonio Water Company solely on the understanding that neither it nor

its stockholders shall be in any way injured or prejudiced by the changes contemplated, and for the purpose of carrying out this compromise agreement.

It is further stipulated and understood between the parties hereto that, the location for power-house and reservoir sites hereinbefore set forth to be reserved from Section 1 and 25, hereinbefore described by township, range and meridian, shall include all houses for operatives, and such other houses as may be necessary to operate the plant, but shall never be used for any other than the purposes for which the same are herein provided to be used respectively, and shall never be changed or used for locations or places of public entertainment or otherwise, except as herein provided for; and that the instruments by which said parcels and conveyed shall contain a proviso limiting the use thereof, as herein set forth.

It is further provided between the parties hereto that all the instruments, contracts and conveyances herein contemplated as to be made and executed by the parties hereto respectively, shall be made to the satisfaction of, and in form approved by the attorneys for the parties hereto respectively.

It is further stipulated that, upon the final execution of this instrument, the party of the first part may enter in and upon section 1 hereinbefore referred to, for the purpose of causing to be constructed, and may cause to be constructed its canal and conduit, for the purpose of conducting the waters of said San Antonio Creek down to its proposed powerhouse on Section 13, and may proceed without

hindrance on the part of the party of the second part in said construction.

It is further stipulated and agreed between the parties hereto that, all the instruments to be executed and delivered, and all the acts and things done, or stipulated to be performed by each of the parties hereto, shall be so executed, delivered, done, kept and performed by said parties respectively, upon whom such obligations may rest under this agreement, within twenty one days from the date of the execution hereof. Time is declared to be the essence of this clause of this agreement.

Wherever in this contract the south line of Section 36, or the north line of Section 1 is mentioned, it is understood and agreed that it shall be a line drawn east and west through said sections at least 75 feet south of the wheels of the Sierra Power Company as now in actual operation.

By the execution of this instrument William G. G. Kerckhoff covenants for himself to do and perform all acts to be by him performed by this contract.

It is further stipulated and agreed between party of the first part and party of the second part that if there is any strip of land intervening between the lots herein agreed to be conveyed to the Ontario Power Company, and to be held and owned by it at the time of the transfer of its stock, as hereinbefore set forth, to party of the first part, and block No. 20 of the Cucamonga Homestead Association Tract, which is owned or claimed by one Frankish, one Stamm, or by the Ontario Land and Improvement Company, party of the second part will obtain title thereto and convey the same to

said Ontario Power Company free and clear of all incumbrance prior to the assignment of said stock as hereinbefore mentioned; and if there is any narrow strip belonging to said Frankish and said Stamm, or said Ontario Land and Improvement lying directly to the east and joining the easterly line of the lots herein agreed to be owned by said Ontario Power Company at the time of said assignment of stock, party of the second part agrees that it will procure title to the same and hold the same at the time of the transfer of said stock.

It is hereby further stipulated and agreed between the parties hereto, that party of the first part, at the time of ~~xxxxxxxxxxxxxxxxxx~~ the assignment, to-wit, of said stock of said Ontario Power Company will assume a certain contract heretofore made by Ontario Company with one McConnell for running a tunnel on the said land so to be held by the Ontario Power Company and mentioned under schedule in subdivision 3rd of paragraph 2 thereof.

It is further agreed and understood that the said land last mentioned and the said Ontario Power Company are subject to a contract made with the Cucamonga Water Company to furnish said Cucamonga Water Company with 65 inches of water measured under a four inch pressure during the season of 1905, and that the said Cucamonga Water Company is to pay therefor the sum of $2500.00; and it is hereby agreed that in the event of the assignment of the stock of the said Ontario Power Company to party of the first part,, as hereinbefore provided, party of the first part will see that said contract is carried out and party of the second part

shall be entitled to receive said sum of $2500,00 for the due performance thereof.

It is further understood and agreed that all of the foregoing stipulations covenants and agreements in this contract set forth as to be done, kept, or performed, by the respective parties hereto, shall be held to bind the heirs, administrators, personal representatives, successors and assigns of each of said parties respectively.

It is hereby stipulated and agreed between the parties hereto that the only property which it is understood is to be owned by the Ontario Power Company at the time of the transfer of its stock to party of the first part, shall be the property in this contract enumerated as belonging to it at such time, and no other; and

Whereas, in a certain deed of trust from said Ontario Power Company to the Union Trust Company of San Francisco to secure the bond issue hereinbefore referred to, of the said Ontario Power Company, there is a certain amount of property mentioned and specified other than that included in this contract as belonging to said Ontario Power Company, which said property it is intended to have released from the effect of said trust deed and not to have retained by said Ontario Power Company longer than is necessary for the purpose of effecting said release, and which it is understood as hereinbefore stated shall not be in the purchase passing to party of the second part by reason of the passing of stock to party of the second part;

NOW THEREFORE, it is agreed in this connection that if at the time of the transfer of said 5000 shares of

stock to party of the first part as hereinbefore provided, there shall still be nominally in the hands of the Ontario Power Company property other than that hereinabove specified to belong to the Ontario Power Company at the time of the transfer of said stock, said property shall be understood to be held merely by said Ontario Power Company subject to be aliened and taken from it at any time when party of the fourth can secure a release thereof from said trust deed from said Union Trust Company of San Francisco.

And it is hereby stipulated that party of the first part and party of the second part after, after its stock shall have been assigned to party of the first part as herein contemplated, shall united so far as it shall be necessary for either of them so to do, or shall separately make such conveyance and execute such instruments to divest said Ontario Power Company of all such property as is not herein specified in this contract as belonging to said Ontario Power Company at the time of the transfer of said stock. in accordance with the understanding hereinbefore in this paragraph set forth.

IN WITNESS THEREOF, the parties hereto, who are corporations have hereunto, by the hands of their respective presidents, first ~~xxix~~ thereunto being duly respectively authorized, subscribed these presents respectively and have respectively affixed their respective corporate seals hereto, and the said William G. Kerckhoff has hereunto set his hand the day and years first above written.

San Antonio Water Company,

By W. T. Leeke, President

By B. C. Shepherd, Sec'y.

Ontario Power Company,

By Wm. Kerckhoff, President

By Otto Weiss, Sec'y.

Sierra Power Company,

By_____ President.

Wm. Kerckhoff.

And that the president and secretary of this corporation be and they are hereby respectively authorized to execute said contract for and on behalf of said corporation , the San Antonio Water Co.

Adjourned,

B. C. Shepherd, Sec."

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Mr. Britt: We offer it in evidence.

Here the Court takes a recess until Monday, March 8, 1909, at 10:30 o'clock a.m.

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The following are the descriptions contained in the records of deeds offered on this day and yesterday (March 4 & 5) and offered on page 1919 et seq. and page 2044.

Deed, S. C. Haskell to J. H. Sourwine, dated July 3rd, 1892, conveying the following property :--

All that certain lot or parcel of land situated, lying and being in the County of San Bernardino, State of California, to-wit:-

The west half of twenty (20) acre lot seven (7) in block (16) and also all of building lot eight (8) of the Cucamonga Homestead Association tract, according to the survey and subdivision of said tract made by George Hanson in July and August, 1874, a plat of which survey is on file in the Recorder's Office of San Bernardino County, and the said party of the first part for the consideration above stated also in like manner conveys to the said party of the second part as an easement appurtenant to the land above described and for use thereon, for the purpose of irrigation and Domestic use, one half (1/2) of three three-hundredths (3/300) part of all the water flowing or to flow in Cucamonga Creek or Canyon. Book 156 of Deeds, page 164.

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Deed, J. P. Haskell to S. C. Haskell, dated July 15th, 1892 conveying the following property:--

One three hundredth part of all the water flowing or to flow in Cucamonga Creek or Canon, the intention being that said water shall be used as an easement to lot 7 of Block 16, of the Cucamonga Homestead Association tract in San Bernardino County, California, and to be used for the purpose of irrigation and domestic use on said land.

Book 155 of Deeds, page 171.

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Deed, Chas. Charnot to S. G. Haskell, dated May 31st, 1887, conveying the following property:-

All that certain lot, piece or parcel of land, situate, lying and being in the County of San Bernardino, State of California, and bounded and particularly described as follows, to-wit:

Twenty Acre Lot number Seven (7) in Block number Sixteen (16) of the tract of land of the Cucamonga Homestead Association, according to the survey and subdivision of said tract made by George Hansen in the months of July and August, 1874, a map or plat of which said survey is now on file in the office of the Recorder of San Bernardino County to which reference is hereby made for more particular description.

And the said party of the first part for the consideration aforesaid, does further grant, bargain, sell and convey unto the said party of the second part, his heirs and assigns forever, as an easement appurtenant to said parcels of land hereinbefore described and for use thereon for purposes of domestic use and irrigation One Three Hundredth (1/300) part of all the water flowing or to flow in the Cucamonga Creek or Canyon.

Book 136 of Deeds, page 177.

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Deed, Cucamonga Homestead Association to Chas. Charnock dated May 3rd, 1886, conveying the following property:-

All the following described real estate, situated in the County of San Bernardino, State of California, to-wit:

Twenty Acres lot number seven in Block No. Sixteen and

Building lot number eight in Block number eight of the tract of land of the Cucamonga Homestead Association according to the survey and subdivision of said tract by George Hansen, Surveyor, in the months of July and August, 1874, which said survey together with the map or plat thereof now in possession of the party of the first part is hereby referred to and made part hereof for more particular description; the tract of land surveyed and subdivided as aforesaid being the same heretofore conveyed to the party of the first part by I. W. Hellman and I. N. Hellman by deed dated July 3d, 1874.

And the said party of the first part for the consideration aforesaid, and pursuant to the resolution aforesaid, does further grant, bargain, sell and convey unto the said party of the second part, his heirs and assigns forever as an easement appurtenant to said parcels of land hereinbefore described and for use thereon for purposes of irrigation and domestic use, one three hundredth part of all the right, title and interest acquired by the party of the first part by virtue of the aforesaid conveyance from I. W. Hellman and I. N. Hellman in and to all the water flowing or to flow in the creek or Arroyo known as the Cucamonga Creek or Arroyo; and also the right to use in common with the other owners of said water, under such rules and regulations as may hereafter from time to time be adopted pursuant to the provision and condition hereinafter contained, all reservoirs, flumes, ditches, and other water works that are now or may hereafter be constructed by the party of the first part for the collection of said water,

or for conducting the same upon said tract of land by the party of the first part of which the parcels of land hereinbefore conveyed form part. This conveyance of water and water-right is however expressly made upon and subject to the following conditions, to-wit:

First: That the distribution of said water shall always be made among the owners thereof according to their respective rights therein; and such distribution shal always be made under and in accordance with such rules and regulations as shall from time to time be adopted by such owners; and for the adoption of such rules and regulations there shall only be necessary the vote in favor thereof of the owner or owners of more than one half of said water and water-rights.

Second: That the expenses of conducting and distributing said water, including the cost of maintaining the ditches, flumes, reservoirs and other water-works ~~constructed~~ constructed for such purposes, shall always be borne by the owners thereof in proportion to the amounts of water used by them respectively.

Third: That the rules and regulations to be adopted as hereinbefore provided shall include rules for the levy and collection from such owner, of his proportion of the expenses aforesaid, and that the amount so levied at any time shall be a lien and charge upon the interest of such owner in said water and water-works, and also upon his interest in the land to which said water rights are appurtenant and upon which said water may be used. Book 50 of Deeds, page 321.

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Deed, I. W. Hellman and I. W. Hellman to Cucamonga Homestead Association, dated July 3rd, 1874, conveying the following property:-

Grant, bargain, sell and convey unto the said party of the second part the following described tract or parcel of land, lying and being situate in the County of San Bernardino, State of California, and known as part of Rancho Cucamonga, and being all that part of said Rancho lying and being North of the San Bernardino Base Line, as shown by the Patent thereof accompanying the same, issued by the Government of the United States on the 9th day of December, A. D. One thousand Eight hundred and Seventy-two (1872) to Leon V. Prudhomme, Adm'r, & saving and accepting all lands heretofore sold to the Cucamonga Co. of which I. Archebald is President, reference being thereunto had will more fully appear. Also thirty-five acres of said Rancho south of the San Bernardino Base Line, being the same tract described in the deed executed by Jose C. Carrillo and Maria Merced W. C. Carrillo to Isaac W. Hellman, bearing date December fifteenth in the year of our Lord one thousand eight hundred and seventy one, reference being thereunto had will more fully appear; also one hundred and sixty acres of land, commencing at a point three (3) chains east of the South-east corner of section four (4), Township one (1) South Range Eight (8) West of San Bernardino Meridian; thence north of true meridian variation 14ø 45' W. Eighty chains to a point on the Base Line; thence East along the Base Line twenty chains to a point; thence south eighty chains to a point on the south boundary of

Section four (4); thence west twenty chains to the point of commencement, being the same land described in a certain Deed of Conveyance executed by Isaac M. Hellman to Isaias W. Hellman dated 11th day of June, A. D. 1873, recorded in Book "M" of Deeds, page 526 of said San Bernardino County. Together with all and singular the hereditaments, tenements and appurtenances thereunto belonging, and all right and rights to water from springs, lakes, marshes, creeks, flumes ditches and other sources, and all rights perfect and imperfect to the waters of the Cucamonga and San Antonio Canon.

Book P of Deeds, page 386.

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Deed, Peter Nelson to W. T. Leeke, dated September 8th, 1902, conveying the following property:-

All those certain lands, pieces or parcels of land situated lying and being in the County of San Bernardino, State of California, and bounded and particularly described as follows, to-wit:

Lot five (5), six (6), eleven (11) and twelve (12) in ~~block~~ block twenty (20) of the Cucamonga Homestead Association Lands as per plat recorded in Book six of Maps, page 46, of the records of said county, containing fifty-eight and 73/100 (58.73) acres of land more or less, subjsct to the taxes for the current fiscal year, 1902-1903 and subject also to a certain mortgage for $15000.00 executed by the grantors to Andrew Rubio of date May 1st, 1902, and recorded May 5th, 1902, which mortgage and taxes the grantee herein assumes and expressly agrees to pay. And subject also to a right of way for a pipe line here-

tofore granted to the San Antonio Water Company.

Book 312 of Deeds, page 219.

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Deed, W. T. Leeke to San Antonio Water Company, dated May 24th, 1906, conveying the following property:-

All that real property situate in the County of San Bernardino, State of California, and bounded and described as follows:

Part of lots five (5), six (6) and twelve (12) in Block twenty (20) of the tract of land of the Cucamonga Homestead Association according to a plat thereof appearing of record in Book six of maps, at page 46, of the records of said San Bernardino County, and described by metes and bounds as follows:

Commences at a corner stake on the north line of said lot 5 distant 1459.8 feet from the North East corner of Lot 11 in said Block 20, thence south 15° 31' East Six Hundred and Sixty (660) feet to a corner stake, thence South 44° 20' East seven hundred and twenty five (725) feet on the south line of said Lot 12, thence Westerly along the South line of said Lot 12 and the South line of said Lot 6 to the South West corner of said lot 6, thence Northerly along the West line of said lot 6 and the West line of said Lot 5 to the northwest corner of said Lot 5, thence easterly along the North line of said Lot 5 to the place of beginning, containing 18.4 acres more or less. Also a right of way for a road between said Lots 11 & 12 and between and across said Lots 5 and 6 as said road now exists, the intention being to convey all of said

Lots 5, 6, 11 and 12 not conveyed in the deed from the party of the first part herein to J. J. Atwood and P. E. Walline and all subject to a mortgage for $15000 now on the property from which mortgage the party of the second part agrees to hold the party of the first part harmless.

Book 375 of Deeds, page 152.

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Deed, Andrew Rubio to Peter Nelson, dated May 1st, 1902, conveying the following property:-

All those certain lots, pieces or parcels of land situated lying and being in the County of San Bernardino, State of California, and bounded and described as follows, to-wit:

Being Lots five (5) Six (6) Eleven (11) and twelve (12) in block No. ~~22~~ twenty (20) of the lands of the Cucamonga Homestead Association as per plat recorded in book six (6) of maps at page forty-six (46) in the records of said San Bernardino County.

Together with all the water and water rights, pipes and flumes and ditches thereunto belonging or in any wise appertaining.

The parties of the first part however reserve to themselves and do not sell herewith, the 22 horse power gasoline engine Jack and pump, & whim now in and upon and about the said premises together with all loose pipe also thereon, the title to which is to remain in, and the same to be removed by, the parties of the first part within sixty (60) days of the date hereof.

Book 311 of Deeds, page 365.

-o-

Deed, Max Meyberg, Trustee, to Andrew Musio, dated February 5th, 1937, conveying the following property:

All these certain lots of land situated in the County of San Bernardino, State of California, and in the Rancho Cucamonga, described as:

Lots five (5) six (6) eleven (11) and twelve (12) in Block Twenty (20) and containing fifty-eight and 73/100 (58.73) acres of land more or less, according to the map of Subdivision made under the direction of the Referees in Partition in that certain action brought by the parties of thhe first part and others against I. W. Hellman and others, in the Superior Court of the said San Bernardino County, State of California, and which said suit is number 5363, for the partition of said lands in which the said Estate of I.W.Hellman was interested, and which said map is annexed to the Final Decree in Partition in said action.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise pertaining and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

Book 234 of Deeds, page 395.

-o-

Recess until Monday March 8, at 10:30 A. M.

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J. W. McKINLEY.

IN THE

Superior Court

OF THE

County of San Bernardino

State of California

Cucamonga Vineyard Company, et al., Plaintiffs vs. San Antonio Water Company, et al., Defendants	Vol. 25. Monday, March 8th, 1909

INDEX.

I. BENJAMIN, Official Reporter

March 8th, 1909. Twenty-fifth day.

CHARLES FRANKISH.

Charles Frankish, a witness produced by defendant, being firstduly sworn,, testified as follows:

Direct Examination.

By Mr. McKinley: Q Where do you reside?

A Ontario.

Q How long have you resided there?

A 23 years.

Q State where at some time in the last few years, you made developments of water in the neighborhood of the Cucamonga Red Mead.

A North of 16th Street. We put down wells I think in about '87 or '88.

Q What did you do in the way of putting down wells?

A About '88, I think we put down two wells.

Q Can you designate them on the map here? This is referring to defendants' exhibit E.

A Those two are the wells that we put down, numbers 1 and2.

Q You had better examine that carefully before you designate them.

A No. 3 I think it is. I am not acquainted with those other wells. It would be 2 and 3.

Q State what you did there, and what you found in the way of water, and what was done with it? Have you any memorandum here to refresh your recollection?

A After delivery of water?

Q Yes.

A We commenced putting down --

A Yes, sir.

Q What amount of water did you obtain when you first began pumping those wells? First, I will ask you did youput them entirely down in '88?

A Oh no, sir. They were deepened afterwards by the Water Company.

Q Did you put them as deep as you put them at that time?

A Yes, sir.

Q How deep was that?

A I think about 350 feet, if I ~~xxxx~~ remember right.

Q Then, when did you first go in pumping them, or having them pumped?

A We tested them in the summer of '94, and then following that contract we increased the water to the Water Company about the middle of '94.

Q How much water did you get?

A About 40 inches.

Q At the time you delivered it to the Water Company, what amount of water did you get?

A We pumped about 30 inches, or a little over at San Antonio Avenue, through a mile and a half of flume -- we delivered 25 inches at the end of the flume.

Q Was there any contract in writing with reference to that?

A Nothing but the contract you have there.

Q This contains something about that?

A On the third page I think you will find the further consideration of that contract we were to do this pumping.

Mr. McKinley: We offer that contract in evidence. If you have a book or anything that contains memoranda, you might as

well take it to the stand.

A I have nothing further.

Mr. Britt: This really seems to me to be a copy. The seal is not an impression, but is a mere scroll. The signatures are all in the same handwriting, and it is obviously a copy.

Mr. McKinley: We will supply the original.

A I haven't examined it lately, but I supposed it was an exact duplicate.

Mr. Britt: Wait a moment. May be we have no point to make on that.

The Court: Are you willing that this copy should be used at this time, provided you have the right to verify it by the production of the original?

Mr. McKinley: We will produce the original, or show loss. It is a correct copy of the contract, at any rate, Mr. Frankish?

A Yes, sir.

The Court: Q Do you remember whether it was recorded?

A No, it was not recorded; at least it was not recorded by us. I don't know whether the Water Company recorded theirs.

Q Were those th wells in which you were associated with Mr. Stamm?

A Yes, sir.

Mr. Britt: This paper appears to be a sort of a supplement to a previous contract. This bears date the 29th day of September, '94, and refers to a previous contract of June 9, 1894, which seems to have been the substantive contract for the delivery of water, and this relates to a subsidiary matter -- the issuance to Frankish and Stamm of some bonds of the

San Antonio Water Company to assist them in carrying on the previous contract --

A The previous contract does not refer to the land in dispute at all. It refers to land in the mountains.

Mr. Britt: This consists of five or six pages.

A May I read a portion of that contract to you? I will read it to you if you will allow me.

Q I have no objection to your reading that portion which bears on these wells.

A And I want to say that, so far as I know, these are the original contracts. Mr. Shepherd can tell whether that is his signature. This is my signature and Mr. Stam's. I don't know about the other. (Reading) "The parties of the first part further agree to diligently carry on to completion the said contract of June 9th, 1894, and also agree within ten days from the date hereof to construct and maintain a wooden flume from the wells upon the real property next hereinafter described to the main conduit of the party of the second part at the highest practicable point for the purposes hereinafter stated, and to provide all rights of way for said flume and the maintenance thereof, between Twelfth and Fifteenth Streets of the Colony lands of the Ontario Colony in said County. Said flume shall be os sufficient capacity to carry the water now developed, or which can be pumped, from the present wells now on said land.

"Said land is described as follows: Being Lots 301, 302, 303, 304, 415, 416, 417 and 418 of Ontario Colony lands, according to the map of said lands on file in the office of the County Recorder of said County of San Bernardino.

"Said parties of the first part further agree to provide all rights of way for said flume and to maintain the same, and to cause to flow therein within the ten days hereinbefore specified, to and into the conduit of said party of the second part, as set forther as hereinabove, all water now developed on said lands, and in addition thereto said parties of the first part further agree that they will increase the pumping plant now on said land by the addition of a compressor of as great power as can be run by the engine now on said land."

Mr. Britt: Q These lands are part of the Ontario Colony lands?

A Yes, sir; the wells that I am speaking of.

Q My understanding was, that the 16th Street wells were on the Cucamonga Ranch.

Mr. McKinley: Yes; but a great portion of the Ontario land is in the Cucamonga Ranch.

A (Continuing) "And said parties of the first party further agree to pump water from all the wells on said land to the fullest capacity of the pumping plant."

Mr. Britt: That is identified sufficiently. I did not recognize the calls of the lots.

Mr. McKinley: The reporter can copy the contract into the record.

Mr. Britt: Yes, we waive the reading of any more of the contents of the contract.

The following is a copy of said contract, the same being marked "Defendants' Exhibit C."

DEFENDANTS' EXHIBIT G.

THIS AGREEMENT, made the 29th day of September, 1894, by and between R. E. Frankish, Charles Frankish and C. T. Stamm parties of the first part, and the San Antonio Water Company, a corporation organized and doing business under the laws of the State of California, and having its office and principal place of business in the Town of Ontario, County of San Bernardino, State of California, the party of the second part, Witnesseth:

That whereas, said parties did heretofore on the 5th day of June, 1894, enter into a contract wherein and whereby the said parties of the first part did agree to undertake the work of developing and delivering of water to the party of the second part;

And whereas, the fulfilment of said contract requires financial assistance from the party of the second part, and

Whereas, the party of the second part is desirous of obtaining water to carry out the purposes of its incorporation, -

Now, Therefore, in consideration of the foregoing the party of the second part agrees to deliver bonds of the face value of thirty thousand (30,000) dollars, issued by the party of the second part, the issuance of which said bonds has been provided for by vote of the stockholders of said party of the second part, as soon as said bonds are ready for delivery and not later than November 1st, 1894, unto the parties of the first part. The Ontario State Bank, a banking corporation organized under the laws of the State of California, having its principal place of business in said County of San Bernardino, shall be the custodian of said bonds and all the proceeds

thereof, in trust however, to be expended by the said Bank in payment for expenses incurred by parties of the first part in carrying out the agreement of June 9th, 1894, mentioned above and this agreement. The Ontario State Bank shall keep an accurate account showing the expenditure of all moneys received from any sale of said bonds and shall keep proper vouchers showing the nature of said expenditures, and said account and said vouchers shall at all times be subject to inspection by the Board of Directors of the party of the second part, or any committee of said Board.

The parties of the first part further agree to diligently carry on to completion the said contract of June 9th, 1894, and also agree within ten days from the date hereof to construct and maintain a wooden flume from the wells upon the real property next hereinafter described to the main conduit of the party of the second part at the highest practicable point for the purposes hereinafter stated, and to provide all rights of way for said flume and the maintenance thereof, between Twelfth and Fifteenth Streets of the Colony of lands of the Ontario Colony in said County. Said flume shall be of sufficient capacity to carry the water now developed or which can be pumped from the present wells now on said land.

Said land is described as follows: Being lots 301, 302, 303, 304, 415, 416, 517 and 418 of Ontario Colony Lands, according to the map of said lands on file in the office of the County Recorder of said County of San Bernardino.

Said parties of the first part further agree to provide all rights of way for said flume and to maintain the same, and to cause to flow therein within the ten days hereinbefore

specified, to and into the conduit of said party of the second part, as set forth hereinabove, all the water now developed on said lands and in addition thereto said parties of the first part further agree that they will increase the pumping plant now on said land by the addition of a compressor of as great power as can be run by the engine now on said land. and said parties of the first part further agree to pump water from all the wells on said land to the fullest capacity of the pumping plant, including said compressor upon said land, whenever required or directed to do do by the party of the second part; and to cause said water to flow in said flume to and into the conduit of the party of the second part as hereinabove set forth.

In further consideration of the foregoing the said parties of the first part promise and agree to develop water and to deliver the same in accodrance with and pursuant to the contract of June 9th, 1894, to the extent of forty inches, measured under a four inch pressure, unto the party of the second part according to the terms of said contract. If the said forty inches of water shall not be delivered by the said parties of the first part pursuant to the terms of said of said contract of June 9th, 1894, upon the 15th day of September, 1895, unto the party of the second part, then the parties of the first part agree at once, upon such default and upon said last named day, to pay to said party of the second part the sum of $750.00 for each inch of water, so measured as above, less than the said forty inches which they agree to deliver on said day pursuant to said contract.

Said parties of the first part as security for the ~~faithful~~

faithful performance of this contract on their behalf, and for the payment of all sums of money which may be due from them according to the terms of this agreement upon the said 15th day of September, 1895, hereby pledge 200 shares of the capital stock of the said San Antonio Water Company, the party of the second part, and mortgage the following described lands situate in the said County of San Bernardino, State of California, being lots 351, 352, 353, 354, 415, 416, 417 and 418, of Ontario Colony Lands according to the map thereof on file in the office of the County Recorder of said County; together with all water developed therein and all water rights of every kind and nature whatsoever thereto appertaining. Together also, with the pumping plant and flume and the rights of way hereinbefore mentioned and everything appertaining to said property, and also Blocks 14, 29 and 59 of San Antonio Heights, according to the map of said San Antonio Heights of record in the office of the County Recorder of said County of San Bernardino, together with all water developed therein, and all water rights of every kind and nature whatsoever thereto appertaining.

The said parties of the first part further agree that no wells shall be sunk or water galleries made in the lands described as follows, to-wit: Being lots 275, 276, 307, 308, 308 1/2, 309, 310, 341, 342, 343, 344, 345, 346, 377, 378, 379 and 380 of Ontario Colony Lands, according to the map of said lands on file in the office of the County Recorder of said County of San Bernardino, until the said parties of the first part shall have performed in full their obligations and covenants under this contract, either by the delivery of at least forty inches of water measured under a four inch

pressue, according to the conditions and terms of said contract of June 9th, 1894, or by the payment of $750.00 for each inch of water which they shall fail to deliver according to the terms of said contract, less than said forty inches.

It is further provided and agreed that before any of the bonds mentioned hereinbefore shall be delivered by the party of the second part unto the parties of the first part herein, the parties of the first part shall show by a good and suffixcient abstract of title to said lands, or a certificate of title to said lands, made by the Consolidated Abstract & Title Company, a corporation doing business in said County of San Bernardino, and having its principal office in the City of San Bernardino in said County, that said parties have an unincumbered title in fee to the said real property hereinbefore mortgaged. It is further in like manner provided and agreed that said 200 shares of the capital stock of the said San Antonio Water Company agreed to be pledged shall be free from all liens and incumbrances. And it is further agreed that the said parties of the first part shall pay all assessments which shall be levied upon said 200 shares of stock during the existence of this contract.

It is further understood and declared to be the intent of this agreement that no compensation whatever in addition to that provided for in the said agreement of June 9th, 1894, shall be paid by the said party of the second part unto the party of the first part for compliance with or completion of this agreement and the agreement of June 9th, 1894.

It is further stipulated and agreed between the parties hereto that in the event of a foreclosure of the mortgage set forth herein that a reasonable attorney's fee therefor

may be fixed by the Court and that payment thereof is secured hereby.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands the day and year first above written, and the said party of the second part has caused these presents to be signed by its President and Secretary, duly authorized thereunto, and the corporate seal of said corporation to be hereto affixed.

A. M. Frankish

Chas. Frankish

G. T. Blamm

San Antonio Water Co.

By J. J. Andrews, President

(SEAL)

By E. C. Shepherd, Secretary.

Mr. McKinley: In this connection, the reporter calls my attention to the fact that we had one exhibit in the opening of the plaintiffs' case. The result is, that we had a duplication of Exhibit A, and I ask that the first exhibit that we have introducedon this part of the case be marked Exhibit AA.

The Court: Very well.

Mr. McKinely: Q After the making of this contract I understand you delivered the water that summer.

A That fall; yes, sir.

Q The contract was made on the 29th of September?

A The contract was made on the 29th of September. We had the flume in about ten days and delivered it as agreed.

Q That was in 1894?

A Yes, sir.

Q What was done with that well and the water of it in the subsequent irrigating season?

A We pumped water from it in 1895, and delivered it the same way, and in 1896, owing to financial difficulties, we were not able to carry on the pumping and the water company pumped it themselves.

Q What was done in 1897?

A I think it was pumped part of the year in '97, and the plant was burned down in '97 in one part of the year. I am not sure of the date, but it was about the summer of '97. And in '98, the Water Company sent Mr. Lindly, one of the directors, to ask permission to make improvements in the well. We were not able to do so, but I gave Mr.Lindly written permission to improve the well, and we gave them the use of the

[illegible]

[illegible]

[illegible]

water for the balance of 1890 and 1891, and in consideration -

Q Do you know the amount of water received by the company during these years?

A After they made the improvements?

Q No. Up to the time they made the improvements.

A I think it varied from 30 to 40 inches.

Q And after they made the improvements, do you know in regard to it?

A Only by report.

Q Of course you can't testify to that. After they made the improvements did you continue to own the wells?

A Very shortly after that we surrendered the lands to them. They advanced us $30,000.00 in bonds, and we gave them security on this property, and we surrendered it to them.

Q You turned the property over to the San Antonio Water Company?

A Yes, sir.

Q During the period when you were still owners of the land and were familiar with it, what part of those seasons did they pump that well?

A Just during the shortgae of the wayter in the irrigation season, when the water was most needed.

Q And they pumped during all that time?

A Yes, sir.

Q You have been familiar with the conditions of the San Antonio Water Company and its stockholders, and the necessities for water, have you?, Mr. Frankish, during your residence?

A I think about as well as any person in Ontario.

Q What was the condition as to the supply of the water for the San Antonio Water Company at the period that these wells were turned over by you and during the period of three or four years subsequent to that while the San Antonio Water Company was acquiring or undertaking to acquire these waters over in the Cucamonga region -- not stating your opinion as to the conditions, but just describing and stating the facts.

Mr. Britt: The facts of the condition of the San Antonio Water Company's supply?

Mr. McKinley: Yes, sir, the conditions.

Mr. Britt: We object to the question as necessarily calling for the opinion and conclusion of the witness. There would be no objection to his stating the supply of water the San Antonio Water Company had, but as to its condition at that time it necesarily calls for the opinion of the witness.

The Court: I am inclined to think that is true. It is a question as to the sufficiency of water.

Q During theperiod that you refer to, how much water did the San Antonio Water Company have for delivery to its stockholders?

A I can't state the exact amount in inches, but the supply ran down from the supply that we had been accustomed to to about one quarter. The irrigation periods were cut down to, in some cases, six hours instead of twenty-four, and Ontario suffered severely for want of water before these developments took place.

The Court: Q You don't remember the exact inches, but you did know at the time?

A Yes, sir; but I cannot speak from memory.

Mr. McKinley: Q You are familiar with the raising of citrus fruits and the irrigation of oranges and lemons and the necessities therefor?

A Yes, sir, I think so.

Q State whether in your opinion the necessity for a larger amount of water increases as the orchards get older, and what length of time it continues to increase?

Mr. Britt: I think it was admitted the other day.

Mr. McKinley: You said 12 years, but we disagree with that.

Mr. Britt: Q There may be some question as to what length of time it continues to grow.

A So long as the trees increase in growth and production, they need more water. And my experience is, that 12 years is very far from the limit of increase.

Q What do you think is the limit?

A I don't think we have reached that point. The oldest orchards we have in Ontario are about 25 years old, and I don't see any diminution at present in their increase in growth and productiveness.

Cross Examination.

By Mr. Britt : Q You state that No. 3 was the main well.

A I should like to state that I do not know how the Water Company has numbered its wells, but the well that they have marked No. 3 is the one from which we pumped first.

Q Was that the well from which you supplied water under this contract with the San Antonio Water Company?

A We had two wells, but I think the one numbered 3 is the principal one.

Q Did you pump both?

A Yes, sir, but the main one was the No. 3. I only know it by the location on the map.

Q When you say it was the main well, do you mean that it furnished the most water, or that you pumped it more at the time?

A Yes, sir, we pumped it more at the time. Our plant was right at the well, and we were on the other adjusting and testing by the plant that was there. We didn't pump regularly from the other one. It is several hundred feet west of the main one.

Q How many hundred feet?

A I couldn't tell you. It might be 200 or 300 feet.

Q Then I understand that you did not commonly pump from the more westerly one?

A No, sir, I should say not.

Q Were those wells both sunk in the first place at the same time?

A I think the well that I speak of as No. 3 was sunk first, and the other one subsequently.

Q You say that was about 1908?

A I think about '06, as near as I can remember. I have no data as to that, but it was about that time. It might be about '07. But we finished in '08.

Q They were shafts at first?

A Yes, sir.

Q And dug about how deep?

A We went down about 60 feet to water.

Q And then stopped?

A Yes, sir.

Q Did you do any pumping when you first sunk your shafts?

A Just simply continued to work.

Q Did you strike the water stratum at about the same depth in each well?

A To the best of my recollection I should say so. One well was a little lower than the other, but the water was about at the same level.

Q No. 3 was a little lower than No. 2?

A No. 3 is a little higher.

Q Do you remember what you pumped from the wells at the time you first tested it?

A When we put in sufficient pumping plant we pumped about 40 inches from the one well.

Q What did you do with the water then?

A Just in testing? We tested it simply, and let it run on the rocks till we took the flume and then we delivered it to the Water Company.

Q You say it was on the rocks? It was in wash ground?

A There was a number of washes around, or galleys.

Q It was part of the delta of the Cucamonga wash?

A Well, it might be so. It is more of an overflow. Yes, part of the delta.

Q Did you keep any log of those two shafts?

A No, sir.

Q Did any one else keep a log of them that you know of?

A I don't know of any. There might have been.

Q Did you sink them yourself, or have them dug under contract?

A We had them dug by day's labor.

Q Those wells were not pumped again till '94, I understand?

A No. That was the first pumping to make any use of them.

Q What did you do with the shafts?

A Boarded them over.

Q Covered over?

A Yes, sir.

Q There was no pump permanently installed?

A Not prior to '94.

Q Did they cave in before '94?

A No, sir.

Q In 1894 did you do some deepening?

A Yes, sir. We ~~[illegible]~~ bored down there before we put in a pumping plant.

Q Who did that drilling?

A Mr. Rubio did it for myself and my associates.

Q Who were your associates?

A Mr. Staam.

Q And your brother?

A No, sir. Only Mr. Staam. Mrs. Frankish was the owner of the land on which part of the other developments were made. That is why she signed this agreement.

Q You had another contract nearer the mountain. Where? North of Ontario?

A Yes, sir, north of 25th Street, right at San Antonio Heights.

Q In the wash of San Antonio Creek?

A No, sir. It was on the high mesa.

Q East or west of San Antonio Creek?

A East of San Antonio Creek, west of Alamanga Creek.

Q To what depth did you sink the well No. 3 in '94?

A I can't state positively. I think about 300 feet.

Q From what do you derive your impression?

A From my memory of the work going on.

Q Were you present there during the progress of the work?

A I was there probably every second or third day. I was there very frequently.

Q And the other well, to the west, about 250 feet?

A We didn't deepen that one. We simply had the shaft down there.

Q That never was deepened?

A I don't know. The Water Company may have deepened it.

Q Who?

A The San Antonio Water Company.

Q You say that was only 200 feet west from No. 3?

A That is as near as I can remember.

Q But you never improved the shaft any?

A No, sir.

Q Then that never was pumped after '96, after it was tested, to your knowledge?

A Not by us -- after '96, did you say?

Q Yes.

A Oh, yes. I think we pumped it a little when we had the air compressor. We put the pump on expecting to deepen it, but we couldn't get the water out and it was left in that shape. That was in '94 that we put the compressor in. We pumped by compressed air.

Q This second well 250 feet westerly from No. 3 was never pumped for purposes of utility?

A No, sir, not systematically.

Q So we may confine our attention to No. 3 as regards the purposes of the present case. You think that well was lowered to the depth of 350 feet about?

A Yes, sir, to the best of my recollection.

Q That means from the surface of the ground?

A Yes, sir.

Q Do you remember how much per foot you agreed to pay Mulio for the work?

A No, sir. We didn't pay by the foot. We hired him by the day to run the machine.

Q Do you remember what it cost you?

A No, sir, I couldn't tell you that now.

Q Did you test that well?, after it was deepened?, to ascertain what it would flow before you made this contract of September 29, 1894?

A We had pumped it and found there was between 30 and 40 inches of water according to our pumping plant. The trouble was we didn't have power enough to lift the water. That was the limit of our lifting power, and not the limit of the water. It was the limit of the plant, and not the limit of the well.

Q You don't know, of course?

A No; that was my opinion.

Mr. Britt: It is not a matter of very much importance, but we ask that the opinion of the witness be stricken out as not responsive.

The Court: Stricken out.

Q. Did anyone call the commissary department, or was anyone
charge for service in getting
A. No, sir, not particularly.
Q. Do you say particularly, do you mean to say that
anyone of the company came, the first sergeant or
on to the night at the time?
A. Yes, sir, to the left of regiment.
Q. What means did the soldiers at the camp?
A. Yes, sir.
Q. Do you remember how many you had sent or served to my people
the night?
A. No, sir. We didn't pay by the head. We filled the by the
day to run the machine.
Q. Do you remember what it was?
A. No, sir; I didn't keep my time.
Q. Do you have that that which, after it was dismounted, it was
certain that it would take before you have had enough of
supplies to, time?
A. We had period if we have every we followed it and at
length of time consumed in the passing night. The trouble
was we didn't have power enough to lift the water. That the
big tank of the lifting power, and not the tank of the water.
It was the tank of the pump, and not the tank of the well.
Q. You don't know, of course?
A. No, that was my opinion.
Q. Other. It is not a matter of very some importance,
and we had that the matter of the allowance be fixed
and no not requisite.
The Court: Adjourn and

Q You began to deliver water under that contract in the fall of '94?

A Yes, sir. About the middle of October, '94.

Q And continued to deliver it how long that season?

A That I couldn't say. Just as long as the dry weather continued. It probably stopped when the rains came.

Q Do you know how much water was delivered steadily that season?

A Into the pipe lines of the water company, a little over 15 inches.

Q How do you arrive at that estimate? Did you measure it or have it measured?

A We measured it from the well. We had the word of the janjero at the other end that there was only 25 delivered. We hada weir that we measured the water over as we pumped it.

Q At what rate were you being paid?

A I don't think we were being paid. We delivered the water in consideration of the issuance of those bonds.

Q Who paid the expense of pumping?

A We did.

Q Frankish and Starr?

A Yes.

Q Have you kept any records of your proceedings that fall and for a year or two following?

A I had at that time, but I have no knowledge where they are. It has been entirely out of our hands, and we had no further use for anything of that kind.

Q Did you pump the well any the next season -- 1895?

A Yes, sir, we pumped it during the progress of our other

work, keeping up our agreement to pump till we got the other water developed. They issued bonds to us on the contract for 50 inches of water -- rather, 40 inches of water -- thirty thousand dollars at seven hundred and fifty dollars an inch-- and we were trying to keep up that supply of water pending the development at the other point.

Q Do you know what time you began in '95?

A No. It would depend on the rains entirely, and the demand for water. It is 14 years ago, and I have had no occasion to keep any record of it.

Q Do you know how late you ran that season?

A No, sir. That would depend also on the rain and the demand for water.

Q You were running that as a temporary expedient till you cluld develop water at the other plant?

A Yes, sir.

Q And when you developed water at the other plant, then you quit pumping --

A No, if we had succeeded in our other development we would have succeeded in this one, but, unfortunately, we were financially unable to carry it on, and we had to drop it.

Q Did you get the other one established?

A No, sir. We failed. We hadn't enough money to carry the matter on.

Q The bonds that you had were not adequate to enable you to carry the work on?

A No, sir. They were not sufficient to complete the work.

Q In 1896 did you pump this No. 3 at all?

A I think in '96 we were unable to finance the matter.

and we allowed the Water Company to do their own pumping in '96. I know in '98 they came to me-- Mr. Lindley came to me on behalf of the Water Company asking permission to improve those wells, and I gave them a written permission to do so. I gave them the use of the water in condition of their making the improvement. I have a copy of the letter.

Q. Let us see it. But first, before we proceed to the letter, in '96 you ceased to pump,

A. Yes, sir.

Q. At what time of the year,

A. I rather think we didn't pump in '96. The Water Company did.

Q. Did the Water Company pump in 1896?

A. I can't say. My recollection is that they did, but I didn't have experience with it personally. I cannot swear

Q. Were you there to see?

A. I may have been there but I don't remember just what they did.

Mr. Britt: We ask that the statement as to what the witness believes the Water Company did about pumping in 1896 be stricken out as incompetent.

The Court: Q. That is not based on personal observation, and when you say--

A. No, sir; I have no recollection as to that.

The Court: Stricken out.

Mr. Britt: Q. In 1897 were you present to observe whether anybody was pumping?

A. My recollection is that the Company pumped continuously from '96 to '97, till the pumping plant was burnt down; but

I can't say so. I am only telling you what I believe.

Mr. Britt: That is incompetent, and I move to strike it out. I asked you if you were on the ground to see whether anybody was pumping it in '97.

A. I can't say positively; I have no doubt I was on the ground and saw them pumping, because I drove around a great deal; but I cannot tell of my own memory, and I wouldn't like to say at what time they were pumping, or when.

Q. You say the pumping station burned down when, in '97?

A. My recollection is it was some time in the summer of '97, by a brush fire.

Q. Do you remember what time in the year,

A. No, sir; it was in the summer, I think.

Q. What was it that burned,

A. The little frame building where the pumping plant was, but I won't state positively when that was.

Q. You don't know whether it was in '97 or some other year that the pumping house burned,

A. I know nothing definitely until '98. I wouldn't like to state under oath what they did because I don't remember what they did in '96 and '7

Q. You don't know what operations were going on in 1896 and '7,

A. No, sir.

Q. You won't undertake to testify what was done in '96 and '7?

A. No, sir.

Q. In '98 you gave some permission to operate the wells?

A. Yes, sir; that was written in my own hand and I kept an

exact copy of the letter that I wrote them.

Q. I notice this is signed Ontario Land and Improvement Company, by Charles Frankish president.

A. Yes, sir.

Q. Had you any conveyance of your rights in thewells to the Ontario Land and Improvement Company,

A. No, sir; those wells were owned by theOntario Land and Improvement Company. I said before that Mrs. Frankish had nothing to do with thisproperty, but theother proposition she was interested in. This property was in the Ontario Land and Improvement Company. There was no other stockholders besides ~~myself~~ our own families. The title was in the Ontario Land and Improvement Company.

Q. I see that thisrefers to well no. 2.

A. We called it well no. 2. the Company put in more. That was the secondwell from the Avenue and we called it no. 2. They changed it to no. 3. And as I say, I am not conversant with their numbering. The well they have marked no. 3 isthat we called no. 2, to the best of my understanding of the facts.

Q. There was nothing done under this contract of September '94 for the purpose of carrying out that contract after '95, Therewas no work done on that contract after '95?

A. No pumping by Mr. Stamm and myself; no, sir. It might be posible that we commenced in '96, but I don't think so.

Mr. Britt: I have no objection to thispaper being introduced in evidence, but I don't see that it adds anything.

Mr. McKinley: It only fixes the date, that is all.

Mr. Britt: Q. The land there on whichthis well was situated, I infer from what you say, was possessed by you under

[illegible] of the Junior Lion's Club.

Q. Is Robin Hood Lions Club the Sponsoring Company, by Charles Frederick Williams.

A. Yes, sir.

Q. Did you ever receive a per diem in lieu of the expense that the Sponsoring Company.

A. No, sir, the Hills were paid by Lions Club the Sponsoring Company. I did never get Mr. Frederick Williams to do with the property, but Walker presented the Sponsored in this property was in the Robin Hood Sponsoring Company. There was a real estate broker Bailey Bennett or Tennison. The title was in the Robin Hood Sponsoring Company.

Q. I was this Schwerer to sell or.

A. To Julia Schwerer to sell or.

Q. To Julia Schwerer to sell or. Did the Company get the money. Did was the money received from the Lions and to Julia Schwerer. They charge 1-or or 2- for 1 May, I Lions Sponsoring was the Company. The real Hill-Burr Julia or, I Lions or Julia for. In the last year Sponsoring of the Lions.

Q. There was a Company the Sponsoring of the Lions "Ed Ja Ja purpose of carrying out a Lions after "Ed. They was a Sponsoring or the Lions Sponsoring stay Tom.

A. No Sponsoring is Lions and Ernell, no, sir. It Hill be Julia Hill was Sponsoring is "Ed, but I don't Lions or.

Q. Until I did a Sponsoring Lions Sponsoring in Lions, but I don't see the Hill Julia Sponsoring.

Q. Exhibit 2 may Tom the Julia, that is all.

Q. Exhibit 2 The land Tom or Julia Hill was Hill. Other Lions Sponsoring Company, was purchased by the Lions

1 in some sort of a contract with the San Antonio Water
2 Company?
3 A. The Ontario Land and Improvement Company
4 Q. You stated that you gave up the land and the well.
5 A. We surrendered to the San Antonio Water Company.
6 Q. What do you mean by surrendering?
7 A. We gave it to them as security for the advancement of
8 the bonds and we couldn't meet our obligation and we sur-
9 rendered out title in satisfaction of the claim of the
10 Water Company for the bonds which they gave to us.
11 Q. You made a sort of a mortgage of the land?
12 A. Practically so. I don't remember the form, but it was
13 in substance that we gave them security and we surrendered
14 it to them, because of out failure to carry out our obliga-
15 tion.
16 Q. Was that land held by this Ontario Land and Improvement
17 Company of which you were president?
18 A. Yes, sir. I believe proceedings were taken to fore-
19 close the same, if I remember right. The officers of the
20 Water Company can tell you about that better than I can. But
21 we made no effort to defend it and we let it go in that
22 way.
23 Q. How did this Ontario Land and Improvement Company suc-
24 ceed to yourself and Staam?
25 A. They didn't succeed to it; it was their land originally.
26 Frankish and Staam were the Land and Improvement Company
27 individually. We carried on one improvement individually
28 on land owned by Mrs. Frankish, and these lands belonged
29 to the Ontario Land and Improvement Company.

Q This contract signed by Frankish and Stamm was not signed by the persons who owned the land? The corporation owned the land, as I understand?

A Yes; I can't state whether the corporation deeded it to others at that time, or how it was--

Q It seems to me that the corporation was undertaking to give this permission in July, 1898.

A Yes; it no doubt gave the permission.

Q Whatever rights were held in the land-- whatever rights to operate this well or to take water out of the land at that time, was held by the Ontario Land and Improvement Company in '94 when that contract was made?

A Yes, sir.

Mr. Britt: We offer this paper in evidence as part of the witness' cross examination. It may be marked Plaintiffs' Exhibit 80. It is a letter of the Ontario Improvement Company addressed to the San Antonio Water Company, of date July 16, 1898.

Said letter is admitted in evidence, marked Plaintiff's Exhibit 80, and the following is a copy thereof.

Copy PLAINTIFF' EXHIBIT 00.

THE ONTARIO LAND AND IMPROVEMENT COMPANY

Incorporated 1887 Capital $500,000.00

Investors, Dealers in and Improvers of Real Estate, Water, Water Rights and Developments

C. Frankish, President.

Ontario, Cal. July 16, 1898.

San Antonio Water Company,

Ontario.

Gentlemen:

In accordance of the request of Mr. Lindley and in consideration that you shall put the well known as well No. 2 on 16th Street in good condition by deepening and recurbing, &c and operating it by an efficient pumping plant, permission is hereby granted to the San Antonio Water Company to have the free use of water so pumped from said well during the balance of the present season and for the season of 1899.

Yours respectfully

Ontario Land & Improvement Company

By Chas. Frankish, Pres.

Q Do you know what quantity of water was pumped from the well, what we call no. 3, in the season of '95?

A About the same as we had been pumping before. I don't think there was any great variation because we couldn't pump any more. We had only one pumping plant and it was deficient in capacity.

Q Was there any log of that well kept when you deepened it in '94?

A Unless it was kept by Mr. Rubio, the foreman, I don't know. He simply reported the work from time to time during the progress of the work.

Q Now you mentioned that the well was pumped during the shortage of surface water: Was that so in 1895?

A Yes, it waspumped during the short irrigation period. If they had enough water without pumping, they wouldn't be at the expense of pumping it.

Q Who paid the expense of pumping at that time? Yourself and Mr. Stamm?

A Yes, sir; till we surrendered it and gave it up to the Water Company to pump themselves. It might be in the summer or spring of '96, because we were unable to carry on our work any further.

Q Where was this surface water that you speak of as being the water supplemented by the pumping?

A The ordinary supply of Ontario. The water from San Antonio Creek.

Q In 1895 how did you determine when a shortage of surface water existed? Who decided that question?

A I presume the zanjero would know whether he had water to

Q. Do you know what happens if water has passed from the well, when it will not, Q. Is the answer if "Yes"

A. Above the water is at the level of the pump-in Pro-duc". Which there was any great variation Because we could-n't keep any water. So we had to use pumping plant and it was difficult to control.

Q. Was there any logical reason why this you developed it in "Yes"

A. Because it was kept up to. Which, the Pressure, I don't know. We simply repaired the pump from time to time during the progress of the work.

Q. Have you anything that the well was repair-during the shortage of surface water, the year as in 1970?

A. Yes, it was pumped during the short irrigation period. If any one manage water without pumping, they would'n be as the shortage of water.

Q. The pump has stopped at pumping at that time? Because and Q. Stopped

A. Yes, for 6hr in morning. It not pump it up as the water dropped to pump Commence. It might be in the mor-ner or during of "Q", because we have small to carry on work any further.

Q. Have we this surface water that the pump at as time the water supplemented by the rainfall?

A. The ordinary supply of Schools. The water from the domestic Cases.

Q. In that the pump stopped when a shortage of sur-face water existed? Is during that period?

A. I presume the engine could have worked to let water in

carry around the irrigation supply without additional water.

Q. Did the zanjero notify you?

A. Yes, sir; either the zanjero or the secretary of the Water Company would notify us when they needed water.

Q. You gave no personal attention to the pumping after '95?

A. No, sir; unless it might possibly be that we commenced in '96.

Q. Well, if it did it didn't last very long?

A. No, sir.

Q. And you don't know what plan the Water Company pursued of pumping the well in '98?

A. Only from hearsay and report; I know nothing of my own knowledge.

Q. I understood you to say you were stockholder of the San Antonio Water Company.

A. Yes, sir.

Q. Were you in 1895, '6, '7, '8 and '9?

A. I have been a stockholder since 1888.

Q. And are yet?

A. Yes, sir.

Q. Are you an officer or have you been an officer of the company?

A. Oh, yes; I have been on the directorate, but I am not now.

Q. You have been at times a member of the board of directors?

A. Yes, sir.

Q. How long ago did you cease to be a member of the board of Directprs?

A. Last November, the last time.

Q November, 1906?

A Yes, sir. For two years prior to that. At the time of these contracts I was not an officer of the Company.

Q During the time you were a director was this same policy pursued by the company relative to the pumping of those wells? That is, that you pumped when there was a shortage of surface water from San Antonio Creek?

A Yes, sir; that has been the custom, so far as I know.

Q That was always the custom?

A Yes, sir; because it is an expense to pump and they naturally would not incur the expense when they didn't need the water.

Q Have you an orange orchard?

A Only a small piece at the present time. I have had up to 250 acres at one time, but now I have only four or five.

Q Do you irrigate it with the water supplied by the San Antonio Water Company?

A Yes.

Q Are there any of thelands supplied with water from the San Antonio Water Company for the purposes of irrigation which derive such supply solely from the San Antonio Creek and Canyon?

A I didn't hear that. Pardon me. Will you repeat that?

Q Are there any lands supplied by the San Antonio Water Company for the purposes of irrigation upon which the water supply is derived only from the San Antonio Canyon?

A Yes; I believe so.

Q Are your lands in that area or are your lands supplied in part with water derived from these wells that you have

been talking about?

A I had lands when I had a larger acreage-- I had lands that were supplied from San Antonio Creek only, and also lands supplied from the wells. You see, the wells are too low down to supply the upper part of the colony. The water from the wells comes from between Twelfth and Fifteenth Streets. Above that it is supplied from the San Antonio Creek.

Q About what acreage is there supplied in part with water from the Sixteenth Street wells, this well no. 3, for example?

A I should say about three-fifths or two-thirds of the Ontario Colony lands get part of their water from there. I give that in the nature of an estimate. Otherwise I would have to go over the map very carefully.

The Court: Q What do you mean by "there"?

A From the wells. That is, they get it from them at times.

Mr. Britt: Q Is that water from the wells (from no. 3, for example) when received by the San Antonio Water Company mixed with the water coming from the Eadie tunnel, where it is distributed in its system in the Ontario Colony?

A I believe it is, but I am not quite clear on that point. I think it comes through the same way.

Q How much further west does that wash or delta of the wash of the Cucamonga Creek extend than well no. 3?

A In '86 or '87 the water from the Cucamonga Creek-- the storm water-- came through our lands within three-eighths of a mile of Euclid Avenue. It washed down in such volumes that I employed a lot of men and spent considerable money to build a stone dam and prevent it coming that way, and

throwing it to the east. It came in within three-eighths of a mile of Euclid Avenue and came down to Fourth Street and across the Southern Pacific railroad.

The Court: Q Do you mean that you spent this money individually?

A For the Land Company.

Q The Ontario Land and Improvement Company?

A Yes, sir.

RE-DIRECT EXAMINATION.

Mr. McKinley: Q Can you point out on the map where the course of the water was that you refer to, referring to defendants' exhibit "D"?

A On the west bank of the Cucamonga wash there is quite a high bank, I think, down to Twenty-second Street, and then the wash spreads out and the water crossed over at that time within three-eighths of a mile- within three 10-acre lots of Euclid Avenue, and cut in in this shape, crossing all those streets, down to the Southern Pacific railroad. It crossed right at that point.

Mr. Britt: Q Describe the point.

A Fourth Street-- It would be seven-eighths of a mile from Euclid Avenue, and 17th Street would be within three-eighths of a mile.

Q That does not describe how far to the east.

A Seven-eighths of a mile east of Euclid Avenue.

Mr. McKinley: Q During your examination you stated that to you were familiar with the raising of citrus fruits, and you are familiar also with the use of waters and the amount of water necessary.

A Yes, sir.

[illegible]

[illegible]

[illegible]

Q And have been during all these times?

A Yes, sir.

Q State whether in 1900 the San Antonio Water Company had sufficient water for the irrigation of orchards and groves belonging to its stockholders, in your opinion?

Mr. Waters: That is objected to on the ground that it is incompetent and calls for the conclusion of the witness. In support of that objection, it seems to me plain that that calls for something that is made up of a good many different factors.

The Court: Yes; I am inclined to think that that objection is well taken. Of course, if the witness shows that he knows the actual amount of water that they had at that time, and has an opinion as to a sufficient supply per acre, it is a different matter.

Q State whether at that time you were informed as to the amount of water that the San Antonio Water Company had under control?

A I wouldn't like to say any special year as to the amount of water.

Q I don't mean the precise amount in inches, but as to whether you knew the amount they were distributing at that time.

A You mentioned the year 1900. I cannot from memory state what the conditions were in 1900. I know during those years we were short of the regular supply of water. I don't know just what xxxxx different amount we had each different year, because I have no record of it.

Q State whether there was during many of those years a

shortage of water?

A Prior to the development of these wells we thought Ontario was going to be ruined for want of water.

Mr. Britt: That is not responsive to the question, and we ask that it be stricken out.

The Court: Yes; the ruination may be stricken out.

(Question read.)

A Yes; a great shortage of water.

Q What effect did it have on the orange orchards or citrus orchards?

A As to their value or condition?

A As to their condition.

A Many of the citrus orchards suffered very much.

Q What in your opinion would have been the effect upon the orchards if additional water had not been procured by the San Antonio Water Company?

Mr. Britt: We object to it as being speculative and as irrelevant, immaterial and incompetent.

The Court: The objection is sustained. I think all he is called upon to do is to show that there was a shortage.

Q How did that shortage continue? How long?

A To the best of my recollection for five or six years.

The Court: Q Why did it cease then?

A Because of the development of the wells and purchase of waters from other sources.

Q Was therean improvement of natural conditions at that time? Had the rainfall become heavier?

A Of course, the seasons varied. Some years we suffered more than others.

The seasons of more extensive rainfall we didn't suffer as much.

Q There was a period of four or five years that was particularly dry?

A Yes, sir.

Q About what years were those? I am asking with relation to your other answer. To what, if anything, do you attribute the shortage?

A I think it was those dry years that accentuated our condition and we had to have a supply of water to tide over such years when it came.

Mr. McKinley: Q State whether in your opinion in any of the years since 1900 there was been a sufficient supply of water from San Antonio Canyon for the irrigation of the orchards and the domestic supply of Ontario?

Mr. Waters: Objected to as calling for too complex a calculation to admit of an answer; that it is incompetent, irrelevant and immaterial. If, as it seems to be now, the theory of the defendants in this case (the Ontario Company) that this Cucamonga supply is an auxiliary supply which, taken together with the San Antonio Canyon supply, is to furnish the colony of Ontario with water-- that seems to be the theory of their pleadings too. Now if they propose to follow that up, it seems to me there is no use wasting time taking any man's simply guess of this thing. Get at your acreage and get at the San Antonio supply and then find out how much per acre is necessary for that locality or how many inches one inch will supply, and get at the details. If you try it on that theory that us were you will have to

The amount of rain actually rainfall in 1930's and '34 [illegible] much,

Q. There was a period of four or five years that was particularly dry?

A. Yes, sir.

Q. About what years were those? I am asking with relation to your other answer. To what, if anything, do you attribute the shortage?

A. I think it was those dry years that accentuated the difficulties we had to have a supply of water in time over some years when it came.

Mr. McKinley: Q. Would you say that in any of the years since 1900 there has been a full sufficient supply of water from the [illegible] for the [illegible] the industries and the domestic supply of [illegible]?

Mr. Holmes: Objected to, as calling for the opinion a generalization [illegible] of an answer, what it is incompetent, irrelevant and immaterial. If, as it seems to be now, the theory of the defendants is that water (the Ontario Company) that this [illegible] supply is an auxiliary supply which, taken together with the [illegible] supply, is to furnish the valley of Ontario with water--that seems to be the theory of their pleadings now. Now if they propose to follow that up, it seems to me there is no use wasting time taking anybody's supply apart of this thing. Why not just arrange and get at the net total supply and then find out how much per acre is necessary for that locality or how many inches one inch will supply, and get at the details. If you try along that theory, that is where you will have to

land your boat, and you might as well get there. We have just gone through that same problem, Judge Britt on one side and I on the other, in the Tucaipe case. There is no use taking generalities from Tom, Dick and Harry. If that is your theory you may as well take up your burden and carry it through. That is where you are going to land and there is no use wasting time.

The Court: The objection is sustained. Defendants except.

Re-Cross Examination.

Mr. Britt: Q There is a Frankish and Stamm tunnel?

A Yes, sir.

Q Is that a San Antonio Canyon development? Where is the tunnel?

A It is the development that I spoke of in our previous contract.

Q That is the subject of the contract of June 9, 1904?

A Yes, sir.

Q Have you a copy of the contract?

A No, sir.

Q Do you know where it is?

A Not at the present time.

Q It was in writing?

A Yes, sir.

Q The San Antonio Water Company has it or did have it?

A I presume it must have it.

Mr. Britt: We will ask the defendant in the case, the San Antonio Water Company, to produce that contract. This contract is scarcely intelligible without it.

Mr. McKinley: Very well; we will produce it.

Q Did you carry on thedevelopment of the Frankish and Stamm tunnel or rather the running of that tunnel until financial stress compelled the discontinuance of it in '96 or '95?

A Yes, sir.

Q How much water did you develop there?

A That I cannot tell you from memory. I think there is flowing from that tunnel now 40 Or 50 inches of water. The engineer or zanjero can give you that.

Q How much was there when you finished work there?

A I don't remember.

Q Do you remember approximately?

A 18 or 20 inches. It was not up to the amount and we couldn't fulfill our contract and we had to give it up.

Q Do you know when you ceased work on the Frankish and Stamm tunnel?

A I can't tell you; some time in 1895-- in the fall of '95, probably.

Q Do you know what time of the year?

A In the fall of the year; September, I think.

Q That was the only development which is the subject of that contract of June 9, 1894?

A That was all.

Mr. Waters: Q That water which you have spoken of a few minutes ago as having run down from the Cucamonga Canyon to within a certain distance of Euclid Avenue, which you sent men up to build a stone wall to throw over to the east, was that water which was running in that westerly wash the ordinary flow of the stream of Cucamonga Creek, or storm

water from the excessive storms?

A. S trom water, during heavy rain. You remember in the spring of '26 we had very heavy rain and it washed over and came down to our land.

Q. And during how long a period of time did the water so run over? Was it only during the immediate storm or was it water for any considerable length of time after the storm?

A. It ran probably several days after a heavy storm, but o only during a storm period.

The Court: It is now twelve o'clock. Somewhat in line with Mr. Waters suggestion, I want to make a suggestion as a time saving fact and one that deals with facts instead of theories. It seems to me there ought to be no difficulty in getting evidence as to a substantially accurate statement of the acreage of the Ontario people and of the ages of the different groves; and then testimony as to the requirements of that acreage on that character of soil, so that we may know pretty near what we are talking about when it comes to the actual amount of water required. I make that suggestion at this time for the reason that if you have not witnesses already advised it will take them some time to get the data together. It is hardly worth while to take much time in speculating about those things.

Mr. McKinley: No; we shall meet the question fairly.

Mr. Waters: We all want to save all the time we can. It seems to me that on the theory which is apparent here in our view of the case of the defendant, that it is incumbent upon them to show what at various times has been their acreage irrigated by the San Antonio supply and also what is the

San Antonio supply and what it has been at various times, as to whether there has been an increase either in the supply or in the area irrigated or, in other words, the new spread on new lands. All of those factors come in, although the Cucamonga people would seemingly not be very much interested in what they are doing at Ontario. But when they come to Cucamonga to eke out their supply, it is for us to scrutinize the Ontario supply and acreage and area and when it was brought in. We have an idea, those of us that have been here a considerable length of time, that there was a time when there weren't any orange groves, and then a time when there were orange groves, and they were put in at different times and new areas brought in. All those things have a bearing. Now, it seems to me, we can reasonably say that they shall not plant out new orchards on the strength of coming to Cucamonga to get the water to supply them with, and all these factors have a bearing. And in that view, while it is in defense of themselves that they come to our side to get water, we would like to know under what circumstances,-- whether it is for new orchards or old orchards and whether their supply is growing shorter and less capable of supplying the demands, and whether that is because they are increasing their demands by new orchards and so on. We think all that is relevant.

The Court: My suggestion, I think, practically covered that matter. My suggestion was to ascertain the present acreage of orange groves or lemon groves and the different ages,-- say the number of acres twenty-five years old, and so on. It is then a matter of computation to find out when they were plant-

ed.

Mr. Waters: Then again, their entire water supply has been one, if you like, which will be shown to have fluctuated very materially, not only by seasonal causes but also that there has been considerable change in their water title from time to time-- between them and the Pomona Company which has some interest in that stream-- and then these tunnels that Mr. Frankish has spoken of, and the stock measured up in regard to that capacity. We may as well get to that.

Mr. McKinley: We haven't been taking any time with anything that will not be necessary.

The Court: Do not understand that I am desiring to interfere with the trial of the case. You all want to get along as fast as we can.

Mr. McKinley: We will cover these matters.

The Court: From the standpoint of the Court, it is better to deal with ascertained facts than speculations.

Mr. McKinley: We will show our acreage and the acreage planted. It has various bearings. It has a bearing on the question why those parties have been silent so long.

Mr. Britt: I will make the suggestion that an accurate understanding by plaintiffs and the Court would be promoted if the defendants could inform us with more frankness and fullness than they have yet just when they got these additional supplies and the quantities which they obtained from time to time. We think that there must have been in the nature of the ordinary conduct of business, records kept of the various acquisitions of water from the Cucamonga side, the times when they received it from the different sources or

wells that they put down, and the tunnels.

Mr. McKinley : That is what we have been trying to do for some time.

Mr. Britt: Our explorations in that direction were not very successful.

Mr. Waters: I will state as an illustration, in the Yucaipe case, on both sides, we brought the actual figures,-- just what the figures were day by day, and got at the exact idea of acreages and fluctuations by days and months in each year, and had it right down to an allspinke

Mr. Britt: And where the water came from.

The Court: We will come to the conliments after a while.

Recess until half past one.o'clock.

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Afternoon Session, 1:30 p. m.

H. C. SHEPHERD.

H. C. Shepherd, previously sworn, recalled for further cross examination, testified as follows:

Cross Examination.

Mr. Britt: Q At the time of adjournment on Friday last, you were reading the contract between the San Antonio Water Company and Ontario Power Company and Sierra Power Company and Mr. Marckhoff, the balance of which contract besides that was read by you seems to have been copied into the minutes of the court kept by the reporter. Now, that agreement contains sundry stipulations on the part of the various parties Do you know whether those stipulations have been carried out?

A I believe they have.

Q There was a lease made by the Ontario Power Company to the San Antonio Water Company, was there not, of the right to take water from the 90-acre tract, and perhaps other water through the Radie tunnel on the west side of the Red Hill? Was there not such a lease?

A No ,I don't remember that to be a lease.

Q There was not any such lease?

A My impression is that there was no lease or contract between the two companies to carry water through the Radie tunnel.

Q I infer from the terms of the answer of the San Antonio Water Company that such a lease was executed. I will be able to refer in a moment to the averments from which I have derived that inference. Paragraph 26 of the answer of the San Antonio Water Company contains this allegation:

"Defendant further alleges, that upon the purchase of the said tunnel and the waters therein by the said Ontario Power Company other than such waters as belonged to this defendant and the Cucamonga Water Company, the said Ontario Power Company did, in the year 1902, lease of the waters so obtained by it, to the Cucamonga Water Company, about 65 inches of water measured under a 4-inch pressure, and the said water so leased was taken by the said Cucamonga Water Company by means of its said system of water works from the said tunnel, and conducted to the places of use of its stockholders, and delivered and distributed to them, part of which was used outside of the limits of the Cucamonga Rancho; and after the year 1902 the said Ontario Power Company leased, and still continues to lease, to this defendant all of the waters of the said tunnel and flowing from the said wells known as wells 4 and 14, and defendant has paid therefor the sum of one hundred dollars per inch per annum for every inch so obtained and used by it; and defendant further says that the amount of water so taken by it from the said Lady tunnel and the said wells 4 and 14 continuously during the said time, has amounted to 290 inches, of which 130 inches belongs to this defendant under its purchase as aforesaid, and the remainder has been obtained by the defendant from the Ontario Power Company under the lease aforesaid.

Technical review allowed, both upon the purchase of the milk tunnel and the water supply by the Milk Cooking Power Company which have been welcomed by this difficult and the Commission Water Company, the milk cannot have been dig, in the year 1921, some of the waters so obtained by it, as the Commission water company, acted in behalf of water department which a total production, and the milk water so issued was taken by the milk Commission water company by means of the milk supply of water mains from the milk tunnel, and connected to the places of use of the complainant, and therefore was discharging a duty, part of which was exclusive of the liberty of the Commission Company, and after the year 1923 the milk tunnel water supply failed, and with conditions in Jersey, in this enforced all of the waters of the milk tunnel and flowing from the milk mills known as mills 6 and 7, and defendant the milk Commission has at one time and that defendant Jay has been for some for water been so diverted and by it, and defendant further may that the supply of water so taken by it from the milk tunnel and the milk mills 6 and 7 continuously during the milk time, has amounted to 240 inches, of which 120 inches belongs to this defendant under its purchase to plaintiff, and the remainder has been diverted by the defendant from the Jersey Water Company water the Jersey Waterworks.

The avermant is that the Ontario Power Company after 1902, leased to the San Antonio Water Company the waters of that tunnel, and I am inquiring about that instrument, the contract of lease. Could you find the authority for it in these minutes, or even a copy of it in these minutes?

A Yes, sir, I can hunt it up in these minutes. It may take me a little time to do it, but it is there. The price that was set on the amount they should pay per inch for that water was agreed upon some time, several months, after the Water Company got the stock of the Ontario Power Company, and I will have to do a little more hunting. I don't know exactly to locate it.

Q All right. I fancy you could find it quicker than any of the rest of us. Any resolution that you find relating to that leasehold, or contract of lease, we would like to have, as well as the instrument itself.

A There was not any contract. It was simply a matter of record; that is for the lease of the water -- for the rental of the water.

Q It rests merely in the resolution of the Board of Directors?

A The resolution of the Board of Directors. If I could be recalled to give that information it would save the court much time as I don't know exactly where to look for it in the records; but I do know that it is there.

Q At the time of that contract of May, 1902, which you read at considerable length the other day, can you tell us who constituted the Board of Directors of the San Antonio Water Company by reference to the minutes?

A By reference to the records I can give you those names.

Q Yes, just take the books there, if you please.

A The Directors consisted of Messrs. W.T.Leeke, W.L.Stewart, J.T.Lindley, A.P.Harwood and Charles Muedy.

Q Five in number?

A Five in number.

Q How long had they been directors at that time? A year or two or three?

A Well, that board of directors was elected in November, 1901.

Q Now proceed, if you please, and give us the names of the members of the directory for the next three or four years, say until 1906, of the San Antonio Water Company.

A In November, 1902, the following board of directors were elected: W.T.Leeke, A.P.Harwood, J.T.Lindley, G.H.Graves, and E.H.Hawkinson.

Q The same board as the year before?

A Not exactly.

Q Hawkinson and Graves were different?

A Yes, sir. In November, 1903, the board of directors that were elected was, W.T Leeke, A.P.Harwood, J.T.Lindley, G.H.Graves and E.H.Hawkinson.

Q The same board as the year before?

A The same board, yes, sir. In November, 1904, the board of directors that were elected consisted of G.H.Graves, W.T.Leeke, A.P.Harwood, W.H.Jolliffe and J.H. Childs.

In 1905, the board of directors elected were: A.P.Harwood, W.H.Jolliffe, C.Frankish, W.T.Leeke and G.H.Graves.

In 1906, the direcotrs consisted of: F.C.Crowell, W.T.Leeke,

G.H.Graves, L.H.Jolliffe and C. Frankish.

Q That will be sufficient for present purposes. Now, you have the minutes of the Board of Directors of the Ontario Power Company. They are here in court, are they not?

A Yes, sir.

Q Now, can you refer to those and give us the names of the Directors of that Company during the same time?

A In 1902.

Q At what time?

A In May, 1902.

Q What day in May?

A May 9th.

Q Was there an election of Directors?

A On May 7th Mr. William G. Kerchhoff tendered his resignation as director and President of the corporation.

Q Of the Ontario Power Company?

A Of the Ontario Power Company. And Mr.L.S.Lyer was appointed a director of the corporation in place of W.G.Kerchhoff resigned. Otto Weiss tendered his resignation as secretary of the corporation. That is only secretary -- and was accepted on motion of George E. Otis, seconded by --

Q And who was appointed in his stead? H.C.Shepherd?

A H.C.Shepherd was appointed in place of Mr. Weiss resigned.

Q You are reading now from the minutes of the Board of Directors of the Ontario Power Company?

A Yes, sir. From the minutes of the Board of Directors of the Ontario Power Company. Mr. A.C.Balch tendered his resignation,as a Director and Vice President, and Mr. George E. Otis was appointed a Director in place of A.C.Balch resigned.

Mr. A.M.Chaffey tendered his resignation as a Director, and L.C.Shepherd was appointed as a Director in place of A.M. Chaffey resigned.

Mr.M.L.Stowell tendered his resignation as Director, and Mr.R.Manley was appointed a Director in place of L.M.Stowell resigned.

Mr. Otto Weiss tendered his resignation as Director, and W.H.Richardson was appointed as a Director in place of Mr. Weiss resigned. I think that covers it all.

Q Well, let us know about the personnel of the boards of directors of the Ontario Power Company which succeeded.

A October 17th, 1903 the Directors elected were George E. Otis, L.C.Shepherd, R.Manley, W.H.Richardson and L.S.Dyer.

Q They served until the next year, did they? That is until the election of 1904? Did they serve for a year until the next annual election? Never mind that. Give us the names of those who were elected in 1904.

A In 1904, there were elected, October 10th, 1904, L.S.Dyer, George E. Otis, R.Manley, J.N.Hartley, and L.C.Shepherd.

Q All right. Who were elected in the next election, in 1905?

A I don't find that there was any annual meeting of the stockholders of the Ontario Power Company in 1905. In 1906 on October 8th, there was a meeting of the stockholders of the Ontario Power Company at which they elected four Director L.S.Dyer, R.Manley, L.C.Shepherd, Judge Gregg, and J.N.Hartley.

Q These five persons named as the Board of Directors who were appointed to serve May 9th, 1902, to-wit, Dyer, Shepherd,

Otis, Manley and Richardson, are the same persons of those names respectively, whose mentioned in the minutes of the Board of Directors, which you read here the other day of May 8th, 1902, designated to hold each the five shares of stock of the Ontario Power Company, upon the understanding that on the request of the San Antonio Water Company they or either of them would, and each of them would, transfer and assign such stock on receipt of five dollars for each certificate of five shares to the San Antonio Water Company? They are the same five persons of those names?

A The same five persons.

Q You being one of the five?

A Yes, sir.

Q And in the next year, 1903, October 12, when Otis, Sherwood, Manley, Richardson and Lyon were elected as directors of the Ontario Power Company, they continued at that time to hold the same shares of stock which were mentioned in the resolution of May 8th, 1902, that I have described just now, - There was no change in the ownership of that stock was there?

A I think they held the same shares of stock; there was none of it disposed of to my knowledge.

Mr. McKinley: He will admit that they held the same shares of stock right through.

Q The next year it seems that Mr. Richardson dropped out and Mr. Crowell was elected in his place: that was in 1904, Mr. Crowell came in as the holder, or was qualified, rather, as the holder of the shares which Richardson had previously held?

A I would presume so.

Q I suppose that you as one of the board would know exactly that if any one would.

A The stockbook of the corporation I suppose would show exactly where the transfer was made.

Q You have already stated that at that time, May 9, 1922, that you were the secretary of the San Antonio Water Company?

A Yes, sir.

Q Was Mr. Richardson at that time a stockholder of the San Antonio Water Company or was he an officer of that company. or was he in its employ?

A He was not a stockholder of the San Antonio Water Company but he was in the employ of the Ontario Power Company.

Q In what capacity?

A As an electrician.

Q Had he any employment under the San Antonio Water Company?

A None that I know of.

Q Then Mr. Robert Conley - that is the gentleman who testified here the other day isn't he?

A Yes, sir.

Q He was in the employ of the San Antonio Water Company was he not?

A Yes, sir.

Q In what capacity?

A Superintendent.

Q In May, 1922, he long had he been the superintendent at the time he was elected a director of the Ontario Power Company,- for what length of time had he been the superintendent under the San Antonio Water Company?

A Oh, for many years; probably eight or ten years.

Q Did he also then become Superintendent of the Ontario Power Company?

A He did not.

Q Has Mr. Lasley ever since that time been in the employ of the San Antonio Water Company?

A He has.

Q In what capacity? The same?

A The same capacity.

Q Was L. P. Dyer in the employ of the San Antonio Water Company in May, 1907?

A He was not.

Q What business was he engaged in then?

A He was a rancher.

Q How did it appear that he was selected to hold five of these shares of stock?

Mr. McKinley: Objected to as calling for the conclusion of the witness.

The Court: I think that objection is well taken.

Mr. Britt: Exception.

Q What relation had he to the San Antonio Water Company as stockholder or officer or creditor or otherwise?

A He was a stockholder.

Q George M. Otis was the gentleman known as Judge Otis here was he?

A Yes, sir.

Q Was he the attorney for the San Antonio Water Company or an attorney for the San Antonio Water Company?

On May 8th and May 9th 1907?

A He was.

Q How long has he occupied that relation to the company -

several years?

A Several years.

Q Did he continue to occupy that same relation afterwards?

A He did.

Q During the time that he continued to be elected a director of the Ontario Power Company as shown by the minutes of that company I suppose?

A Yes, sir.

Q Probably up until the time of his death?

A Yes, sir.

Q When did Judge Otis die? Do you remember?

Mr. Gregg: I think in June, 1906.

Q When on October 8, 1906, Judge Gregg was elected a director, of the Ontario Power Company, he succeeded I believe Judge Otis?

A I believe so.

Q Had he been attorney for the San Antonio Water Company for many years?

A Yes, sir.

Q The firm of Otis & Gregg for many years had been the counsel and attorneys for the San Antonio Water Company previously to May 8th of 1902, and continued to be for some years thereafter?

A Yes, sir.

Q October 10, 1904, Mr. Crowell was elected a director of the Ontario Power Company: was he then in the employ of the San Antonio Water Company?

A He was working in the office of the San Antonio Water Company and the Ontario Power Company.

Q In what capacity?

A My impression is that he was draining his salary as a book keeper for the Ontario Power Company.

Q Was he also keeping books for the San Antonio Water Company?

A He was.

Q For what length of time had he occupied that position previous to October 10, 1902?

A I can't remember; probably a year or a year and a half; something of that kind, perhaps two years.

Q And he kept the books of both companies during that time?

A He was working on the books of both companies.

Q You say he drew his salary from the Ontario Power Company?

A That is my present impression.

Q Can you refer to the stockbooks of the Ontario Power Company and state from whom L. T. Shepherd, F. L. Richardson, H. Manley, L. T. Myer, and George E. Otis, respectively, received the transfer of shares five shares each of the stock of the Ontario Power Company, on or about May 14th, 1902?

A The five shares that were transferred to George E. Otis were transferred by Otto Weiss; the five shares transferred to H. C. Shepherd were transferred by Otto Weiss; the five shares transferred to Robert Manley were transferred from E. F. Stowell; there were five shares transferred to L. T. Myer from A. C. Balch; five shares transferred to F. L. Leake by A. C. Balch.

Q Have you the date of those transfers?

A May 14th, 1902.

Q What did you pay for the transfer to you of those five

A I didn't pay anything.

Q The consideration for the transfer of all of these shares was paid by the San Antonio Water Company was it not?

A I don't know.

Q How did you understand that the consideration was paid for the shares of stock which were transferred to you?

Mr McKinley: Objected to as incompetent and calling for his conclusion.

The Court: Overruled.

A I didn't understand anything about the consideration; we were following out strictly the instructions of our attorney in regard to the matter.

Q I suppose Judge Otis?

A Judge Otis told us how to do it and we did it in that way.

Q Well, the transfer of that stock was all a part of the arrangement under which the San Antonio Water Company took over the balance of the stock wasn't it?

A That is the way I understand it.

Q Now, in the resolution, or one of the resolutions passed by the board of directors of the San Antonio Water Company on May 8th 1907, was one expressive of the sense of that board that Mr. W. T. Lewis should be appointed general manager of the Ontario Power Company for the term of five years and so forth, and that a contract should be entered into with him: was there any resolution,- you being a member of the board of directors of the Ontario Power Company,- was there any resolution of that company passed in pursuance of that previous resolution of the San Antonio Water Company, pro-

viding for a contract with Mr. Leeke?

A I will have to look at the minutes.

Q Yes.

A (Witness examines minutes) In the minutes of the Ontario Power Company dated May 9, 1905, -

Q Let me look at that entry. Read that portion of the minutes of the board of directors of the Ontario Power Company to which your attention is directed.

A On motion of George H. Otis, Mr. A. M. Leeke was appointed as general manager of this corporation for the term of five years from this date.

Q Will you read what appears in the minute book of the Ontario Power Company from which you have just now read this resolution concerning the employment of Mr. Leeke, the resolution or consent of the stockholders of the Ontario Power Company, concerning the change of the place of business of that corporation?

A The following consent to change the place of business of this company was filed: We, the undersigned stockholders of the Ontario Power Company, a corporation organized and doing business under the laws of the State of California, and being the holders of all the capital stock of said corporation, hereby consent to the change of the principal place of business of said corporation from the City of Los Angeles County of Los Angeles, State of California, to Ontario Colony in the County of San Bernardino, State of California. In witness whereof we have hereunto this - (it was type-written 9th and there are some marks over it and it might be the ~~9th~~ 11th or it might be the 12th)- -

Mr. McKinley: We will stipulate it was either.

A (Continuing) - - day of May, 1902, subscribed our names respectively, reciting the amount of stock in said corporation by us respectively this day owned.

Members	No of shares	Amount.
George E. Otis	5	500
W. T. Lecke	4975	
B. C. Shepherd	5	
R. Manley	5	
E. A. Richardson	5	
L. E. Dyer	5	

Q. There seems to be a resolution concerning the change of the place of business adopted by the board of directors also.

A. The following resolution was adopted by unanimous motion: Whereas, upwards of two thirds of the owners and holders of the Capital Stock of the Ontario Power Company have this day signed a consent in writing to a change of the principal place of business of this corporation from Los Angeles, County of Los Angeles, State of California, where it is at present located, to Ontario Colony, County of San Bernardino, State of California,- now, therefore, be it resolved that the secretary of this corporation forthwith give notice according to law of said proposed change by publishing notice of the same at least once a week for a period of three successive weeks in the Los Angeles Daily Journal, a newspaper published and printed in the City of Los Angeles.

Q. Now, you have there also the form of contract between Mr. Lecke and the Ontario Power Company have you not?

A. Yes, sir.

Q. Is that the form of contract that was entered into between them?

A. I believe it is.

Q. Just read it.

A. On motion of L. L. Otis, seconded by A. E. Shepherd, the president and secretary were authorized to execute an agreement with A. J. Locke as follows: This memorandum of agreement made this 17th day of May, 1902, by and between the Ontario Power Company, a corporation, organized, existing, and doing business under the laws of the State of California, party of the first part, and A. J. Locke of Ontario, County of San Bernardino, State of California, party of the second part, witnesseth: First: Pursuant to a resolution passed by the board of directors by the party of the first part on this 17th day of May, 1902, which said resolution is hereby expressly referred to and made a part hereof, party of the first part hereby employs party of the second part to act as its general manager for the term of five years from the date hereof, at an annual salary of two thousand dollars for each and every year of said term; said salary to be payable monthly; and the party of the first part hereby expressly authorizes party of the second part to manage, control oversee and conduct all its business of whatever kind, nature or description that same may consist of, in the interest of said corporation, according to his best judgment and discretion. Second: Party of the second part hereby accepts said employment as general manager for the purposes and at the salary hereinbefore specified and set forth. In witness whereof party of the second part has subscribed these

presentsand party of the first part has by the hand of its president first thereto duly authorized, subscribed the name of said corporation hereto, and by the hand of its secretary has hereto affixed its corporate seal the day and year first above written. Ontario Power Company, By President Secretary.

Q That contract authorized by this resolution of the board of directors was actually entered into was it between the company and Mr. Leeke?

A It was.

Q And did Mr. Leeke enter upon the discharge of his duties as manager in pursuance of that contract of the affairs of the Ontario Power Company?

A He did.

Q And did he continue to discharge such duties and to act in that capacity for the period of five years mentioned there?

A He did.

Q And probably does yet continue in that capacity?

A It was continued after the five years.

Q Before that time the place of business of this Ontario Power Company had been in Los Angeles had it not?

A Yes, sir.

Q After the adoption of those resolutions of the board of directors on May 12 1902, and the consent of the holders of all the stock given, as stated there, was the place of busines of the Ontario Power Company moved to Ontario,- its office and principal place of business?

A Yes, sir; it was moved; we went through the necessary

[illegible]

Mr. [illegible]

Mr. [illegible]

Mr. [

proceedings and the place of business was moved to Ontario.

Q And its office was the office of the San Antonio Water Company from that time forward?

A The office of both companies in the same building.

Q Which company owns the building?

A The San Antonio Water Company.

Q And has owned it all the time since a time previous to May 8, 1902?

A It has.

Q Now, Mr. Shepherd, you stated the other day as among the reasons why the San Antonio Water Company acquired the stock of the Ontario Power Company, and entered into these arrangements of a somewhat intimate nature, to say the least, between the two companies, was the circumstance that the San Antonio Water Company understood that a contract had been made between the Ontario Power Company and McConnell, for running a tunnel north from the Cadie tunnel, or I believe an extension from that tunnel, up into the country north of 16th Street or the Base Line: Do I correctly state the substance of what you said in that regard?

A I think so; that seems about the substance of it; that was my understanding.

Q After the stock was acquired by the San Antonio Water Company that tunnel - those developments in contemplation by the Ontario Power Company - were not constructed were they?

A No, they were not.

Q Did the San Antonio Water Company take any measures to inform itself, to obtain accurate information about the consequences which would follow or might follow if that tunnel

proceedings and the place of business was moved to Atlanta.

Q. And its office was the office of the San Antonio Water Company from that time forward?

A. The office of both companies in the same building.

Q. Which company owns the building?

A. The San Antonio Water Company.

Q. And was moved in all the time since a time previous to May 8, 1922?

A. It has.

Q. For, Mr. Hughes, you stated the other day as money the treasury of the San Antonio Water Company acquired the stock of the Atlantic Power Company, and entered into agreements of a somewhat intimate nature, to say the least, between the two companies, was the circumstance that the San Antonio Water Company understood that a contract had been made between the Atlantic Power Company and Underwood, for running a tunnel north from the Dallas tunnel, or I believe an extension from that tunnel, to link the nearby work of Dallas Street or the Bee line: Do I correctly state the substance of what - a week in that report?

A. I think and that seems about the substance of it; that was my understanding.

Q. After the work was assumed by the San Antonio Water Company that tunnel - those developments in connection with the Atlantic Power Company - were not constructed, were they?

A. No, they were not.

Q. Did the San Antonio Water Company take any measures to inform itself, to obtain accurate information about the consequences which would follow or might follow if such tunnel

were extended up into the neighborhood of the 16th street wells, did the board of directors go on to the land, Mr. Locke yourself or others, and inspect the situation, for one thing, was that done?

A I don't think they did at that time.

Q Did any of them to your knowledge?

A Not that I remember at that time.

Q Did they employ any engineer, hydraulic engineer, to advise them upon that subject?

A I don't think they did.

Q Do you remember for what reason the board of directors entertained the apprehension that an extension of the tunnel up north of the Base Line and into the vicinity of the San Antonio Water Company's wells would or might affect them detrimentally?

Mr. McKinley: Objected to as calling for the conclusion of this witness as to the conclusion of somebody else

Mr. Britt: This witness was a member of the board.

Mr McKinley: No he was not; that was an error; he said so once but he corrected it.

Mr. Britt: Yes, that is so. Mr. Shepherd was an officer of the company. In the answer of the San Antonio Water Company in the case it is stated as follows: (Mr. Britt reads from pleading, beginning with "Defendant further alleges that in the year 1901 and in the early part of 1902, the defendant the Ontario Power Company a corporation duly incorporated under the laws of the state of California and then owning certain water bearing lands" etc - ending with - "acquired the capital stock of the Ontario Power Company".

were related to Inky Ink reclamation service Pick equipment, did you issue or dispatch it to the Ink, or Inky Pickerell or others, and despite the situation, far as Inky was that money?

A. I don't think any of it was that time.

Q. Did any of them go your machinery?

A. Not that I remember at that time.

Q. Did they supply any machinery, equipment, or anything like that equipment?

A. I don't think any did.

Q. Do you remember for what reason the board of directors authorized the representation that an advertisement of the Inky by means of the Inky line and into the vicinity of the San Angelo Inky Company's mills would be quite likely to be successful?

Mr. Condley: Objected to as calling for an conclusion of this witness as to the motivation of somebody else.

Mr. Smith: This witness was a member of the board.

Mr. Keeling: Is he not well; that has no bearing on what motive actuated it.

Mr. Smith: Did that is not. Somebody was a member of the company. In the minutes of the San Angelo Inky Company in the case it is stated as follows: Mr. Smith read in pleading, beginning with "Internal Revenue" allegations that in the year 1921 and in the early part of 1922, the defendant the Inky Water Company a corporation duly incorporated under the laws of the state of California and that during certain water "Inky Lake" etc - well-also - "Inky purchased the capital stock of the Inky Water Company".

Q. In view of the statement in the answer that it was for the purpose of protecting the water rights of the San Antonio Water Company in those wells, that it acquired the capital stock of the Ontario Power Company, I inquire of you, you being an officer of the company at that time and secretary, as to the manner in which it was supposed or believed or contemplated by yourself and other officers of the company to your knowledge, that the acquisition of this stock of the Ontario Power Company would protect the water rights of the San Antonio Water Company in the said wells, or tend to afford such protection?

Mr. McKinley: Objected to on the ground that it is calling for a conclusion, and for an expert opinion from this witness without the proper foundation having been laid, and that it is not proper cross examination.

The Court: Objection overruled; ofcourse he can only speak from his own knowledge as to what the other officers did.

Mr McKinley: Exception.

A. The ontario Power Company owed the land, the property, south of the lands of the San Antonio Water Company; it owned all the property on the west of the property of the San Antonio Water Company , and owned all the property on the north of the property of the San Antonio Water Company, and the running of a tunnel almost completely surrounding the holdings of the San Antonio Water Company, and those holdings being very small, it was thought that if all of that property surrounding the property of the San Antonio Water Company could be ontained by the San Antonio Water Company that it certainly would be a protection to their water rights.

The Court, Q You say it was thought: Was there a discussion of that question among the officers and directors of the company?

A Oh, it was discussed in a way, in a general way; I can't give the details of it; but the circumstances showed up to the board of directors that they were absolutely surrounded by the property of the Ontario Power Company, and that they were threatening to drain all of the wells and property of the San Antonio Water Company, and it was thought to be an effort to take the waters of the San Antonio Water Company and divert them and sell them over again to the San Antonio Water Company.

Q In so far as your answer purports to state what the other officers and directors may have thought, do you base your statement on what the other officers and directors said in regard to the matter, or is that merely your inference?

A I just base my statement on the general conversation that it would be a - that the other board of directors did discuss this matter, that it would be a protection to the water rights of the San Antonio Water Company to obtain all of that surrounding property amounting to about 1000 acres, which absolutely and almost surrounded the property of the San Antonio Water Company.

Q It was discussed then by the directors?

A It was; it was talked of by the directors.

Mr. Britt. Q Had they before them any report from any expert or experts on the question?

A Not to my knowledge.

Q Was there also any subject of discussion - was it a

subject of discussion among the officers of the company including yourself, as to the control that would be exercised by the San Antonio Water Company of that land, in case it should acquire that stock?

A I can't remember of any particular discussion on the linesof the question that you ask.

Q During what length of time was this acquisition of the stock of the Ontario Power Company by the San Antonio Water Company under consideration by you officers, the officers of the San Antonio Water Company before the consummation of the deal?

A About a month or six weeks; something like that; I can't remember.

Q Who conducted the negotiations on behalf of the San Antonio Water Company?

A The board of directors and Judge Otis and Judge Gregg.

Q Do you mean they were all assembled whenever the matter was discussed at all with representatives of the Ontario Power Company, or was there no deputing of the fixing up of that business, that contract, to Mr. Leeke or Judge Otis or some other representative of your company?

A No, it was done by the board of directors as a whole and Judge Otis and Judge Gregg.

Q Who represented the Ontario Power Company in negotiating the deal?

A Mr. Kerckhoff and Mr. Chaffey and Mr. N. T. Stowell and Mr. A. C. Blach.

Q Practically their whole board of directors?

A Yes, sir; and they had their attorneys present from time

to time.

Q That board of directors consisted of five members only didn't it?

A Yes, sir; at least that is what I understand.

Q The other day you had a memorandum here, which purported to contain various items of expenditure made from time to time by the San Antonio Water Company for sundry improvements which did not show dates I think except in one instance: have you been able during that time to inform yourself further on the subject of those expenditures and the dates when they were made?

Q If you mean the dates that we looked over in the stock ledger - -

Q I don't speak of stock books; I was speaking of this typewritten memorandum which you exhibited here I think on Friday morning, but we thought it was somewhat short in the matter of dates when the expenditures were made and you were going to examine your books further to get the dates when the several amounts were paid out for the purposes named in the memorandum and I inquire of you whether you have been able to do that?

A I have hunted up the estimates that were paid for the drilling of the six or seven wells on 10th street; I have not gone further into the matter for the reason that there is such an enormous amount of detail that I would have to bring thousands of vouchers down here to show it, but I have here today the bills for the drilling of the wells.

Q Well, probably we will take those while we can get them, but I will state for your information we don't care anything

about the small dust of the balance; we are after the larger items, some accumulation of them, and the time when they were paid; that is much more important to us than to have the exact amounts; we care very little about the exact amounts. Well, probably you can tell us at what time your company paid for deepening the Haskell well?

A Yes, sir; by referring to the account.

Q Yes, and the amount.

A On December 1st, I have a voucher here dated December 19th, 1899, in which we pay A. F. Halstrom $150.43, for drilling a well on the Haskell property.

Q Well, which one was that? That was the Haskell well No. 1 was it?

A Number 1.

Q Well, are you able to say how long he was engaged in that work? Does your memorandum, your voucher, specify the time?

A The time that he was engaged in the work?

Q Yes, ~~paid~~ you paid in December, 1899; that amount of money; now how much time did that cover?

A Well, I don't know how long he was drilling the well; probably a month or six weeks, probably two months.

Q The memorandum doesn't show?

A It doesn't show.

Q Was there anything paid subsequent to that time for deepening the Haskell well?

A The deepening of the earth was paid for, previous to this time.

Q What time was that paid for?

A. Oh, just a month or two months previous to this; one work succeeded the other.

Q. That would be about October, 1899?

A. Oh I should think so.

Q. Now, the other Haskell well, have you a voucher there showing when that was paid for?

A. I have a voucher here dated October 13, 1899, in which we paid to Beck Brothers for sinking Well No. 2 at the Haskell property $160.50

Q. Was anything paid for the sinking of that same well later than that?

A. I think not.

Q. There were only two wells of your company at the Haskell property? That is true isn't it?

A. That is all; this work was for ■■ - this was for the work only and not for the material that was used.

Q. Does the voucher there specify the depth?

A. No. It well- shows it to be about -- shows it to be 114 feet.

Q. Have you a voucher there for any work done by your company on the Rubio well?

A. No, we have not.

Q. Your company placed an engine there temporarily that well at one time did it not?

A. That well was placed by the San Antonio Water Company or by Mr. Locke; the San Antonio Water Company paid for it, but whether the water was turned into the pipes of the San Antonio Water Company, or only used on the property to irrigate the trees I am not certain about; I think it was only placed

to irrigate the trees that were on the property.

Q Will your vouchers show the times when that well was pumped by the San Antonio Water Company?

A I could hunt it up in the office.

Q Haven't you got it here?

A I have not got it here.

Q Now, what do your vouchers show on the subject of work on the well next west number 6? Number 6 is the Rubio well isn't it; it is marked here number 6; I think that is the Rubio well?

A Yes, sir; I think that is the Rubio well.

Q That is your impression?

A Yes, sir.

Q Proceeding westerly the next well is number 5; what do your books of expense show touching the payments made for that well and when they were made?

A I have a voucher, April 23, 1902, payable to Beck brothers for drilling well No. 5, 16th street; I don't know whether this is the same five that would be on the exhibit or not.

Q I think so, the numbering commencing at the west; we have understood it to be your notation that appears here on the chart, map or exhibit, the same as those by which the wells are known by the San Antonio Water Company.

A The amount of that voucher is $1,337.50.

Q What is the date?

A April 23, 1902.

During what time was the drilling going on?

A I don't know; it is not stated.

Q Is there anything there to show approximately between what dates?

A No, not a thing.

Q Do you know about how much time was occupied in drilling the well before payment was made?

A I think some of those wells were drilling about three or four weeks; I think other ones took two to three months.

Q Well, proceed to the next well number 4?

A I have a voucher here dated December 4th, 1901, payable to Beck Brothers for drilling, the well number 4 at 16th street and the amount of the voucher is $1524.20

Q Does it show the depth?

A 707 feet.

Q I think I didn't ask you if your voucher showed the depth of well No. 5?

A 645 feet no. 5.

Q This last one number 4, was how long in process of drilling?

A I don't know, any of those.

Q Well number 5, probably you have more items on that as it seems to have been sunk by degrees.

A I have a voucher dated August 29th, 1901, payable to Beck Brothers for drilling well number 3 at 16th street $1534.75

Q State the depth?

A 705 feet.

Q Is that all that it shows in that connection? Does it show anything about the time occupied?

A It doesn't show anything about the time.

Q Does it show anything about the number of feet this pay-

ment was intended to cover? The whole depth of 700 feet plus or less than that?

A We paid for just 705 feet.

Q And you paid for it all at that time?

A We made partial payments previous to that time; on May 25th - -

Q What year? Give the dates of all the payments made.

A 1901, May 25th, $200.

Q Does that show for how many feet?

A It does not; it is simply an advance payment.

Q Payment on account.

A Cash on account.

Q Of what? Well number 8?

A I wouldn't like to say without hunting up voucher number 4046.

Q All right; proceed.

A July 2nd, 1901, there was cash on account, voucher number 4109, $150. On August 13th, the same date as this voucher, we charged them with fuel oil, $194.50; the fuel oil charged is the amount used between April first and August 13th, 1901.

Q By Beck and Company?

A By Beck and Company.

Q Proceed; give us all of these items.

A It may be quite possible tat that particular well occupied from April to August in drilling.

Q In 1901?

A In 1901; I know that some of those wells took a long time to drill. I have a voucher here dated November 10, 1900 payable to Beck Brothers drilling the well number 2 on the

16th street property, $1271.40; depth of well 624 feet; we charged up Beck Brothers at that time with fuel oil amounting to $594.86.

Q You mean you received credit on the amount of the total charge for that much oil?

A Yes, sir.

Q Their total charge was how much?

A $1271.40; we charged them up with $594.86 worth of oil.

Q And the balance was paid in cash or its equivalent?

A Yes, sir.

Q Does the memorandum show what length of time was occupied in the drilling of that well?

Q It does not.

Q This was well number 2?

A Well number 2 according to the voucher.

Q What do the vouchers or books show concerning well number 1

A I have a voucher here dated May 14, 1900, payable to Beck Brothers, for drilling the 16th street well, 640 feet, total amount of bill $1329; depth paid for 640 feet; that I believe is well number 3 that is on the map here; and I might also say that I think that the numbers on all of these vouchers do not correspond to the numbers on the map, none of them.

Q Our understanding is that the map shows the numbers of the wells as placed by your company, but your company may have changed its notation from time to time. Have you any vouchers there for any other wells, particularly on the 16th street property besides those you have named?

A I have not.

Q You don't know of any other wells of your company on the 16th street property?

A I don't know of any others.

The San Antonio Water Company, if I remember right, called what is well number 3 on the map, well number 1, at the time they were drilling it, and I think all of these numbers after that correspond to the well that was drilled, first well, second well, third well, fourth well and fifth well; but they are probably not in the same notation as they have the wells numbered on these exhibits.

Q Well, let us recur for a moment to this well number 1 as marked in your voucher again; that is noted as some 640 feet deep isn't it, the number 1, the one which you think is number 3 on the exhibit 1?

A That is the only voucher that I have in which the well is not numbered, and this particular well is not numbered on the voucher; it says drilling 16th street well, but I am quite satisfied that it is well number 3 as located on the Exhibit.

Q What is the depth again?

A 640 feet.

Q Now, have you any memorandum or voucher or entry in your books showing any payment previously made for drilling in that well?

A I don't think we did any drilling in that well previous to that date; we may have done other work in the way of deepening or repairing or timbering, but I am quite satisfied that we didn't do any drilling before that time.

Q If you have any voucher for deepening or repairing or

deepening or repairing that well I would be glad to have it.

Q. Now with reference to the pipe line from the 16th street wells by means of which the water is conducted to the Ontario Colony, have you vouchers there showing when you first began to make pipe lines, or to make payments for the construction of that pipe line and the amounts, and thence forward until the present time or say until March 1, 1924?

A. No, I haven't got those vouchers here; the vouchers for money paid on pipe lines are not arranged according to the sections were laid; when we lay a pipe line it is simply charged to pipe lines and it may be in any part of the colony, so I would have to through all those vouchers and pick out the right ones which were on the 16th street property, and I can pick those out if necessary.

Q. Well it is desirable and possibly you had better make a note of it, to have the history of the present pipe line leading from the 16th street wells to Ontario Colony, when it was constructed and the amounts of the payments made.

Now, you showed us the other day some items of expenditure by the Ontario Power Company for some wells or a well number 14 along toward the end of the year 1923, and you said something about a syphon that had been inserted in that well previously. Is that syphon and the expense of installing it the subject of any entries in your books?

A. Yes, sir. I have also found some additional vouchers that I have here today that were not here the other day, in regard to that matter.

Q. Let me look at those if you please. You have with you some vouchers of payments made by your company, the last

Antonio Water Company for work on the Stowell well. The Stowell well is what you call number 4 in it, and the San Antonio Water Company's accounts it is known as number 4?

A. No, the Stowell well I think is what is the 2 in 14.

Mr. McKinley. Who is the Ontario Power Company?

A. Yes, sir; Ontario Power Company vouchers.

Mr. Pritt. Is it the San Antonio Water Company's bill or form of voucher, isn't it?

A. Yes, sir; but it is the Ontario Power Company; this is all Ontario Power Company's accounts.

Mr. Pritt. Well, I got the impression that it was San Antonio Water Company's dealings with the Stowell well or number 4; the well called number 4 is the Ontario Power; I don't desire to go into this other matter at present.

Now, I have asked you about this lease from one company to the other and I understand you to say you are not prepared to go on further now with this lease for instance.

A. No, I couldn't give any accurate statement.

Q. The statements you have given here and the expense of the 16th street wells is in line with what you have been requested to furnish, and there has been time and time the amount spent, and it is desirable you should give us the information about the expense of other water developments there in the wells in the same manner, and in the tunnel, but until we get that and until the witness has the opportunity to obtain the other information which has been requested here that he should obtain, including this lease from the Ontario Power Company to the San Antonio Water Company, I think I shall have to forego further cross examination.

Mr. Maskell, I refer again to the time when you examined well number 14 at the head of the Medic tunnel, as I understand it Mr. Stowell was there present and that well was being pumped on a test, and as I understand it you have already testified at that time the pump was pumping 200 inches of water or about that: what kind of a pump was in operation there at that time?

A. I think it was a centrifugal pump.

Q. And it had a suction on it?

A. I don't know; I only saw the water coming out on the surface of the ground.

Q. Those centrifugal pumps operate by suction of some kind do they not?

A. Yes, sir.

Q. And the water by that pump was being thrown to the surface of the ground?

A. Yes, sir.

AMENDMENT EXAMINATION.

Mr McKinley Q. Can you state the bonded indebtedness of the San Antonio Water Company on the bonds secured by the mortgage or by the trust deed.

Mr. Waters: We object to that as immaterial and not the best evidence.

Mr. McKinley: I am merely seeking to get the amount they still owe on the bonds; I simply want the amount.

Mr. Britt: We object on the further ground that it is irrelevant.

Mr McKinley: This is Mr. Elliott that is defending now.

The Court. Overruled.

Mr. Britt: Overruled.

A I think I can show the amount of the indebtedness by the company's ledger which I have here.

Q Well, take the book and show it.

A The San Antonio Water Company's ledger on page 18 shows bonds payable - first mortgage, the balance due on December first 1, 1906, about $111,000.

Mr Britt, Q That means due or balance outstanding?

A Balance outstanding.

Q Have you that brought down later?

A I didn't know there was a new ledger; that account has been transferred to a new ledger and I have not brought that other new ledger down here; I can bring that here, but I can tell offhand what has been paid since that time.

Q You can tell what has been paid since that time?

A I think I can tell exactly/ I think $31,000 paid since that time; $25,000 in 1907 and $38,000 in 1908.

Mr McKinley Q Has the San Antonio Water Company any other indebtedness?

Mr. Britt: Objected to as irrelevant.

The Court: Overruled.

Mr. Britt: Exception.

A Yes, it has other outstanding indebtedness

Q How much is it? (question withdrawn.)

Q Is there a second deed of trust held by Mr. Elliott?

A No; the second deed of trust is held by the Los Angeles Trust Company.

Q Now, with reference to the Ontario Power Company, what is the amount of the bonded indebtedness of the Ontario Power

Company?

A The ledger of the Ontario Power Company at page 26, shows outstanding bonds amounting to $367,000, November first, 1908.

Q With regard to expenditures, were the amounts specified in the contracts between the Cucamonga Fruit Land Company and W. W. Stowell and the San Antonio Water Company paid by the San Antonio Water Company?

A They were.

Q At what time?

A There was about $80,000 paid in August, 1909; I don't remember the dates of the others but I can trace it on the books of the company.

Mr Pritt, Q What was the $80,000 paid for?

A That was for one-half or fifty inches of water purchased from the Cucamonga Fruit Land Company, and thirty inches of water purchased from W. W. Stowell.

Q This $80,000 was paid to both of them, to the Cucamonga Fruit Land Company and to Stowell?

A It was in August that the total amount was delivered to W. W. Stowell; but it was delivered from escrow; the $80,000 in bonds had been placed in escrow I think in April, 1909 and it was in August that this escrow was delivered to W. W. Stowell; the total amount was delivered individually to W. W. Stowell.

The Court, Q You used the expression one half in connection with something.

A The San Antonio Water Company purchased 100 inches of water from the Cucamonga Fruit Land Company and this amount

of $80,000 was $50,000 for one half of the water purchased from the Fruit Land Company, and $30,000 for the total thirty inches purchased from Stowell; they were both purchased at the same time.

Mr Britt, Q The payment was made in bonds or cash?

A Bonds.

Q Bonds of the San Antonio Water Company?

A Bonds of the San Antonio Water Company.

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W. T. LEEKE

W. T. Leeke, previously sworn, being recalled by defendants testified as follows:

DIRECT EXAMINATION.

Mr Mc Kinley Q A contract has been introduced here between A. L. McConnell I think it is and the San Antonio Water Company, dated in April 1902 - Will you state what was done in the way of carrying out that contract?

A There was some work done on that contract, under that contract, before I became manager of the company but very shortly after I became manager I went over the work with Mr Mc Connell and the conditions were such that we both concluded that it would be very difficult to carry out that contract and the contract by mutual agreement was laid aside and the work proceeded under different arrangements.

Q When did it proceed?

A At once.

Q Will you just describe what was done and when it was done?

A The first gallery was pressed to completion and the

water allowed to run in from the upper waters of the wells through the gallery to the shaft over Eadie tunnel, about 80 feet west, and a siphon was immediately placed or very soon placed in the gallery and a large amount of water turned through the syphon from the well and made to flow or drop down the shaft about 80 feet to the west, dropping into a tunnel.

Q How much water was taken out in that way and put into the tunnel?

A I should judge about something over 150 inches, running through them gallery, and when the siphon was put in it was materially increased; to what extent I can't say.

Q Now, with regard to the work of McConnell, is this the work that he did at that time?

A Yes, he completed the placing of the siphon, and the pump and motor and machinery for pumping was taken away.

Q Do the vouchers come under your supervision so they would refresh your recollection, so you would be able to explain them, do you pass upon them or examine them before they are passed?

A Yes, sir; that work was done under my supervision.

Q I show you a voucher of June 7, 1902, with a bill attached; will you state whether you examined that voucher and approved it, and if you know what it refers to?

A This is a voucher for work done by Mr McConnell's men, after we had practically laid aside the contract in which he charged for the labor for the men, and 15 percent above that for his supervision and general skill in conducting the work.

Q What work was it that was done there that that fixes the

date of?

A This was work in connecting the upper gallery, the first gallery with the Stowell well or well number 9 or 14, with the shaft about 80 feet to the west of number 9, which shaft was connected with the Eadie tunnel.

Q Number 9 and 14 are the same thing?

A Yes, sir.

Q Did the work that is shown by that bill complete the connection so that the water was carried in there?

A That completed the connection; yes, sir.

Q What is the work represented by the next voucher?

A July first, 1902, the voucher is headed Contract for putting in siphon, sinking shaft, putting in cement pipe and back filling, making concrete box in tunnel, setting weir and so foth, $700.00. The term contract there refers to a verbal contract or agreement between myself and Mr McConnell.

Q That work was in fixing up that connection?

A Yes, sir; placing the siphon in to which I have already referred; and putting in of cement pipe and back filling the same was not directly connected with this tunnel extension, but had reference to the work down immediately north of the 90-acre tract where we had a weir for measuring; he put in a concrete box there for measurement and set the weir and so forth.

Q That is the weir that measured all of the water that came on to the 90-acre tract?

A Yes, sir.

Q Now, passing on to the next one, give the date of it and state what it refers to, not from the paper, but examining

ends of?

A. This was said in connection the steps taking, the first gallery with the Hannell well or well number 2 on 14, with the shaft sunk in fact in the west of section 9, which shaft was connected with the Stella tunnel.

Q. Number 9 and 14 are the same things?

A. Yes, sir.

Q. Did the work that is shown by that drill complete the connection of that the water was carried in there?

A. That completed the connection; yes, sir.

Q. What is the work recommended by the work standard?

A. July first, 1902, the reserve is loaded Contract for pumping in sinker, stating shaft, pumping in tunnel pipe and back filling, making concrete box in tunnel, setting mill and so forth, 1902.00. The here contract there refers to a verbal contract or agreement between Orrell and Mr. Hannell.

Q. That work was in taking up this connection?

A. Yes, sir; placing the pipes in to which I have already referred; and putting in or cement pipe and back filling the same was not directly connected with this tunnel extension, but had reference to the work done immediately north of the 24-acre tunnel where we had a mile the excavating in put in a concrete box there for measurement and not the well and so forth.

Q. That is the only that measured oil or the water that came on to the 24-acre tunnel?

A. Yes, sir.

Q. Now, passing on to the work now, give the date of the work which is taken in, out from the water, the complete

the paper and statin from your own knowledge of the work?

A September 5th. 1902, work for the month of August, Stowell well, shaft, 23 feet at $6.25 a foot, $143.75; drift 50 feet at $6 a foot, $300; Total $443.75.

Q What was that drift?

A This drift was a second drift or gallery under the first, and the sinking of the shaft was as the water receded from the flowing of this siphon lowered; it lowered to the extent that another drift or gallery could be constructed under the first drift or gallery, and this is a part of that work, both sinking the shaft deeper and driving the drift.

Q Well, pass to the next voucher?

A October first 1902, Ontario Power Company to McConnell, debtor, Stowell well, drift, 46 feet at $8.50, $391; shaft 16 feet at $6.25, $100; changing siphon $100; total $591.

Q What do those items refer to?

A They refer to the completion of the second gallery and the sinking of a shaft to that gallery and the changing of the siphon from the first gallery to the second one below, the one just completed as indicated by this bill.

Q State whether the siphon had been operating up to that time?

A The siphon had been operating up to the time of change continuously and the changing of the siphon was done very expeditiously; it had to be; it was a matter of rapid work in order to prevent flooding the tunnel and endangering the lives of the men.

Q The next voucher?

A December 8, 1902, estimate of work done by A. L. McConnell

for the month of November, 1902 for filling in old shaft $15; changing siphon and putting in gate $100.

Q What was that work?

A The filling of the old shaft, I am not altogether clear at this time as to which old shaft was there; several shafts were filled by McConnell, but I believe it was the old shaft near the present measuring box at the head of the 40-acre tract.

Q And the other items?

A Changing siphon and putting in gate and so forth; we at this time - this was in December - we concluded it would be best if we could control the flow from that well, so we arranged with McConnell to get everything in readiness and rapidly re-arrange the siphon, putting in a gate with a hand wheel and so forth, so that a person could enter the shaft and by turning this wheel operate the gate placed in the siphon to shut off the water during the winter season, or shut it off to the extent that we would only use such as was actually needed after this date.

Q What had occurred with reference to the flow that led you to do this?

A Well, the flow had continued, a large flow had continued after placing the siphon in this second gallery and we did not desire that large flow during the winter; the flow had kept up exceedingly well, a very large flow of water.

Q About what amount? State the amount?

A Something over 200 inches; I think that is a conservative statement.

Mr Britt, Q That is 200 inches from what source?

A 200 inches from the well number 9.

A January 9, 1903, estimate of work done by A. L. McConnel for month of December, 1902,-- retimbering 300 feet of tunnel at 75 cents, $225.
Retimbering 70 feet below weir at $1.50, 105.
16 feet above weir at $1.50, $24.00
56 feet pipe laying in branch above weir at $1.00, $56.00.
Repairing shaft, $20.00.
Setting 2 gates in weir, $10.00. Total, $440.00.
The Eagle tunnel from the measuring shaft at the northern line of the 90-acre tract, northward of this 300 feet mentioned, was in bad condition; it needed repairs, and retimbering; and so I arranged with McConnel to do this work and it was done.
Q This work was all in the old portion of the Eadie tunnel?
A Yes; thewhole of it.
Q Well, you can pass to the next voucher.
A August 7, 1903. Estimate of work done by A. L. McConnel, for the month of July, 1903, Stowell shaft.
81 feet at $4.00, $324.00.
13 feet at $12.00, $156.00.
Pipe laid in Stowell tunnel, 441 feet 30-inch pipe, at $1.00 $441.00.
191 feet 24-inch pipe at $1.00, $191.00.
Filling up old shaft and concreting bottom of present working shaft, $80.00 . Total, $1192.00.
Q Describe what that work was.
A The Stowell shaft was the shaft immediately above the 90-acre tract and we had that lined with concrete pipe, and

[illegible] January 9, 1[illegible], [illegible] [illegible] [illegible]

steps or rounds of galvanized iron placed in there, and we also had pipe laid in there as far as through the old drifts that were considered somewhat dangerous, and we re-lined them with pipe. It is difficult for me to recall at this time the exact extent of that work.

Q I don't know that we care for that particularly. It was work in fixing up appliances which had previously existed in handling the water?

A Yes, sir.

Q Does that apply to all the items in there?

A Yes. That is my belief.

September 10, 1903, work done by A. L. McConnel for laying pipe in shaft, 32 feet at $1.00, $32.00.

Labor repairing weir, 2½ days at $4.00, $10.00. $42.00.

That was repair work.

November 2, 1903, estimate of work done on Stowell shaft by A. L. McConnel in the month of October, 1903, 17 feet at $12.00, $204.00, and other items making $219.00.

Q That is all repair and improvement work?

A I am inclined to believe that it is sinking still deeper the Stowell well.

Q You sank it deeper about that time?

A Yes; I think we began about that time.

Q How much deeper was it sunk at that time?

A 17 feet.

Q Did you obtain any additional amount of water?

A No. It wasn't water development. There was no additional water obtained in this and there was no intention to.

Q And you didn't obtain any additional water?

A No, sir.

Q Pass to the next.

A December 1st, 1903. Estimate of work done by A. L. McConnel in the month of November, 1903.

60 feet of tunnel at $12.00, $720.00.

This was work on another gallery underneath the two galleries already completed.

Q That was a gallery for carrying water?

A I am not positive whether this was a gallery on the tunnel level ornot. About that time we were looking toward the bulkheading and sealing up of that well, and work was done toward connecting on the ground floor or tunnel floor of the well and the tunnel.

Q Did you obtain any additional water by the construction of that?

A I think not.

January 2, estimate of work done by A. L. McConnel for month of December, 1903, tunnel at Stowell well 34 feet at $12.00 $408.00.

Shaft, 13 feet at $12.00, $156.00. This and the other was along the line of the water surface.

March 1, 1904. Ontario Power Company, estimate of work done by A. L. McConnel for the month of February, 1904,

344 feet pipe laid at $1.00 atx $344.00.

100 feet of back fill at 90 cents, $90.00.

Filling old shaft and concreting bottom of same, $50.00. $484.00. This work was along the line of water conservation and repairs.

Q No development of water?

12,000, etc.

Q. Then is this true.

A. December 1st, 1920: Statement of work done by J.J. McDonald in the month of November, 1920,

Gallery of tunnel at $12.00, $4720.00.

This was another gallery underneath the two galleries already completed.

Q. What was a gallery for carrying water?

A. I am not speaking of that. That was a gallery at the Government level tunnel. A drift that was the "water" leading tunnel the [illegible] and sinking up at this well, and that was done [illegible] the ground [illegible] tunnel, the floor of the wall outside tunnel.

Q. Did you obtain any additional water by the construction of that?

A. I think not.

January 2, statement of work done by J.J. McDonald for month of December, 1920, sinking of shaft with 38 feet at $12.00, $456.00.

Drift, 14 feet at $12.00, $168.00. This was the extension along the line of the water surface.

March 1, 1921. [illegible] statement of work done by J.J. McDonald for the month of February, 1921,

348 feet pipe laid at $1.00 was $348.00.

180 feet at [illegible] at [illegible], $180.00.

Filling the shaft and [illegible] bottom of same, $50.00.

$453.00. This work was along the line of water conservation and repairs.

Q. In furtherance of water?

A No, sir. April 1st, 1904, estimate of work done by A. L. McConnel for month of March, 1904:

90 feet pipe laid at $1.00, $90.00.

100 feet back fill of gravel, 90 cents, $90.00.

Man and team hauling pipe 1 day, $4.00.

2 men pulling pump 1 day, ~~$4.00~~ at $2.00, $4.00.

2 men pulling pump ½ day, $2.00.

2 men and teams hauling gravel 1 day, $6.00.

Same, ½ day, $3.00

Same, 1 day, $6.00

Same, ½ day, $6.00. Total, $210.00.

That work is all of the same character as the last.

This bill referred to the general work. There is still one other bill on the same line.

Q That is all of the same character?

A Yes, sir.

Q None of it refers to the development of water?

A We had a pump in there in which we pumped to lower the well to the point where we could connect the lower tunnel, and this pipe laying and back filling etc. and shaft was what had been termed a new shaft a little south of the Stowell well which was placed there in order that the bulkhead might be used to withhold the water. This back filling and the work generally was to place the shaft and tunnel in such a condition. The back filling was done very completely.

Q Was there any development of water?

A No, sir; it was not considered any development.

Q Did you get any water?

A During the time the pump was being run to lower the water

we got more water.

Q You were pumping more water?

A Yes.

Q I think that is plain enough.

Mr. Waters: That was merely to make a stop.

A The purpose of this last work was to place the whole development in such a condition that we could conserve the water by placing a bulkhead in this shaft immediately below the Stowell tunnel. The shaft was built for that purpose and these pipe lines were so placed that the tunnel pipes and back fill would be in safe position for the bulkheading of the tunnel.

Mr. McKinley: We offer these vouchers in evidence and ask that they be marked exhibit H. The record might show that a portion of them are the same vouchers that were used in the examination of the witness Shepherd and produced by him.

Mr. Britt: Yes; that is correct.

Q Mr. Locke, in the year 1909 what supply of water did the San Antonio Water Company have in the irrigating season?

Mr. Waters: We object to that on the ground that it is--

Mr. McKinley: I thought I was following counsel's advice.

Mr. Waters: No, you are not. I think this Court will take judicial knowledge that the supply of any colony in this climate and in this country for any irrigation season is not a fixed quantity. That is to say, it is a thing which is common knowledge that this supply in any one year or irri-

gating season is a fluctuating rather ~~and~~ than a fixed quantity. Now, if counsel really wishes to follow any suggestion, we know that ordinarily speaking a record is kept of the supply,-- daily measurements, daily records. Witnesses bring them in here.

Mr. McKinley: They are in now, a great many of them.

Mr. Waters: This question surely gives us no intelligence as to what the supply in one year for the whole irrigating season was, when we know it is a fluctuating quantity. They have more in June than they do in August. Sometimes more in one month than in another in different years.

Mr. Britt: And they select the year 1899, which is one of the driest years reported. I concur in the objection of Mr. Waters, that it is not the best evidence.

The Court: I think it is the best evidence of its kind. I don't think much of thekind.

Mr. Britt: It is the best evidence of its kind, perhaps, but it has already appeared that there is a record kept of the water delivered.

The Court: The objection is overruled, but it really seems to me--

Mr. McKinley: I am only seeking to call for a general statement. I don't mean to control measurements by it. But I do not concede at all that I have not the right to ask the question, nor do I expect to spend much time on it. I merely want his description of the conditions.

The Court: It is really too general. As far as the sufficiency of the supply of the stockholders, that is a different proposition. But I understand you to ask for the prac-

tical measurement.

Mr. Haskell: As I remember the evidence in this case, there is sometestimony that the records of measurements were lost, up to a certain time; but it has never been shown that all the records were burned up--

The Court: I don't suppose that is the contention here.

Mr. McKinley: No, sir; I will withdraw the question.

Q What were the sources of supply from which the San Antonio Water Company received its water in the summer of 1899?

A We had a very low supply of water--

Mr. Waters: I move to strike out.

The Court: Stricken out.

Q The question is what were the sources of water supply.

A Wells and tunnels.

Q What did you have at that time?

The Court: Where were they.?

A A supply from the San Antonio Canyon, a tunnel, a supply from Sixteenth Street well no. 3, a supply from the Sowell tunnel, and a small supply from the 90-acre tract or the tract immediately above the90-acre tract to the east. I am not positive that that water came from what was sometimes called--

Q Was all the water received from these sources used for irrigation and domestic purposes by the stockholders?

A Yes, sir.

Q About what proportion of the usual amount of water which you were distributing that year?

Mr. Waters: Objected to on the ground that it is calling

for comparisons of the witness of things, the elements of which have not been stated.

Mr. McKinley: I withdraw the question.

Q. About what size heads were you giving to your stockholders at that time during the year 1900?

A. Part of that irrigation season from one quarter to one-half heads.

Mr. Waters: I move to strike that out as not responsive to the question. He was asked what size heads, and the witness has given something else. Instead of saying how many inches, he gives what comparison it was to other heads. In other words, he is answering the question that was withdrawn before.

The Court: The answer will be stricken out.

Q. State the size of the heads.

A. A portion of the time 20 inches on half time.

Mr. Waters: I move to strike out the expression "half time" on the ground that it is a comparison.

The Court: Motion denied. Plaintiffs except.

The Court: Q. What do you mean by heads on half time?

A. Ordinarily the heads run 24 hours, and it was found necessary to run them for 12 hours instead of 24.

Mr. Waters: That is the reason I made the motion I did, because I saw that the witness was bound to get in that answer.

Q. Will you state what head you were giving to your stockholders in the year '99?

A. My answers were referring to that date. I had that in mind.

Q. Then we will pass to the year 1900. State the facts in

regard to that upon the same proposition, as to the amount which your stockholders received.

A. Without reference to minutes and data, I am not prepared to state. I know that the water was low.

Q. What acreage was planted of citrus fruits in Ontario under the San Antonio water system and dependent on stock in your company for irrigation in the year 1899 as nearly as you can estimate it?

A. Something over 5000 acres.

Q. Can you give any estimate as to the age of the different orchards at that time?

Mr. Britt: Wasn't that a matter on which it was proposed this morning that there should be some accurate information obtained rather than to depend on estimates?

Mr. McKinley: I don't know where you would get it except on estimates.

Mr. Britt: Taking 5000 acres of land, it is impossible for any man to give anything like an accurate estimate of the age of all the trees, unless they happened to belong to him. There arehundreds of people owning lands in this tract, and why inquire of the witness to give the estimate of the age of trees on 5000 acres of land under such conditions, and ask him to fix that estimate as of 10 years ago? We submit that it is not a competent question.

The Court: It is competent. The only question is whether it is accomplishing anything.

Mr. McKinley: If hewas very familiar I should say it was; if not, itwouldn't.

The Court: I think on a former trial in 1900 there was an

estimate furnished at that time of the acreage and the ages at that time, and I don't know but what he might have some recourse to that data. The objection is overruled.

A At this time the older trees were about 15 years old, and they graded from that age down to-- the major part of them, I should fancy,-- to 6 or 8.

Q You had a general superintendance of the company and gave great attention, to and covered to a considerable extent in your testimony already the matter of the distribution of storm waters. During how long a period did that cover?

A From the winter of1903 to the present time. Our board of directors authorized the employment of an engineer to look into this matter carefully, and authorized the expenditure of such money as might be needed in this work in the fall of'~~22~~ 1902

Q And you have described that all in your other testimony. Is there anything that you desire to add to that? I will save time by examining that hereafter. I think it is fully covered. If I should want to ask him, I will do so. Mr. Joliffe informs me that you didn't testify to turning the waters in from the San Antonio Canyon. What have you done with reference to that?

A We have turned the winter waters that have been conveyed over part of the colony lots-- we have turned a portion of that into theNineteenth Street ditch, running easterly, on to the ~~wahhes~~ of the Cucamonga Creek north and northwest of the Sixteenth Street wells.

Q Have you put in any additional construction for the purpose of doing that?

A Yes, sir; we laid two additional pipe lines this last year so that we might be able to convey large quantities of water across the colony into that ditch.

Q I think you have testified that you were thoroughly familiar with the growing of citrus fruits and other matters and the amount of water required.

A I am.

Q What in youropinion is the number of inches per acre during the irrigating season required for the proper cultivation of citrus fruits in Ontario and under the system of the San Antonio Water Company?

Mr. Haskell: Of what age?

Q For varying ages, giving his opinion of it for different ages as he goes along.

A Orange and lemon trees of 20 and 25 years of age require for the best development of crops of fruit about an inch to 3 acres.

Q And descending to the other ages? Cover the matter as fully as you can, applying your statements to the San Antonio Water Company's stockholders' land.

A From 15 to 20, an inch to 4 acres; from 10 years of age to 15, an inch to 5 acres. And it is pretty difficult to define how much trees younger than that require. It depends on the character of the soil. Lemon trees require considerablemore water than orange trees. It would be advisable to use ~~xxxx~~ even a greater quantity of water for lemon trees than I have stated in this answer.

The Court: Can't you give us any idea about the amount of water required for trees under 10 years of age?

A. Yes, they explain the additional year there that they [illegible] year so that we ought to able to convey large quantities of water across the valley with that ditch.

Q. I think you have testified that you were thoroughly familiar with the growing of citrus fruits and other matters and the amount of water required.-

A. I am.

Q. What in your opinion is the number of inches per acre during the irrigating season required for the proper cultivation of citrus fruits in Ontario and under the system of the San Antonio Water Company?

Mr. Russell: Of what age?

Q. For varying ages, giving the amounts of it for different ages as you go along.

A. Orange and lemon trees of 20 and 25 years of age require for the best development of crops of fruit about an inch to 20 5 acres.

Q. What [illegible] is the other amount given? Give the [illegible] as fully as you can, — applying your statements to the San Antonio Water Company's stockholders' land.

A. From 15 to 20, an inch to 4 acres; from 10 years of age to 15, an inch to 6 acres. And it is pretty difficult to define how much trees younger than that require. It depends on the character of the soil. [illegible] soils require more water than the heavy [illegible]. It would be advisable to use everywhere a greater quantity of water for lemon trees than I have stated in this answer.

The Court: Can you give me any idea what the amount of water required for trees under 10 years of age?

A Trees from 10 years down to 5, an inch to 7½ acres; and from 5 to 2 or 1, an inch to 10 acres.

Q I suppose your answer is an average of the entire colony. There must be different sections where a little more or a little less is required, according to the character of the soil.

A That is true. And also, according to the rainfall. In extremely dry winters the heavy soil requires a large amount of water to produce a crop. In a wet winter the sandy soil requires more water than the heavy soil.

Mr. McKinley: Q You are familiar with the soil all over Ontario?

A Yes, sir.

Q And over all the lands irrigated under the San Antonio Water Company's system?

A Yes, sir.

The Court: Q At one time in Ontario, it seems to me, it must have been along about that period, quite a number of groves were cut back, were they not, or re-budded?

A Yes, sir.

Q How do you classify them in regard to this tabulation as to the amount of water used?

A A cut-back and rebudded grove for the first two years would require the amount that a five-year old tree required. They have extensive roots, and they recover so rapidly that after four or five years they are equal to a 10-year old tree. I might also remark under this same proposition, that when the extreme dry years (especially of '98 and '90) we found it necessary in order that our trees might survive to

cut them back very severely; and trees were topped in that colony in order to preserve them over the dry season so that they might exist with the extremely small supply of water we had.

Q. You said '98 and 90.

A. 1898 and '99.

Mr. McKinley: Q. About what is the cost per acre of maintaining the San Antonio Water Company system of distribution?

A. The cost to water users at the present time is about $20 per acre per year.

The Court: Some witness has testified that your company supplied water to other than stockholders. Is that correct?

A. No, sir; the San Antonio Water Company only supplies the stockholders.

Cross Examination.

Mr. Waters: Q. You referred to a siphon in this well which you sometimes term no. 9 and which we refer to as no. 14. Now I understand you also to say that that siphon has been changed several times-- lowered. How many times was the siphon lowered?

A. The siphon was lowered from its original installation once, and it was changed a second time to the extent of putting in a gate and rearranging it. My memory does not indicate the extent of the change only as I see it on the bill.

Q. I don't wish to take up any unnecessary time asking you about this siphon if anybody knows more about it than you know about it. That is, anybody available. Has there been any set of maps made of that siphon?

A. No, sir; I think not.

Q. Then it depends on men's memory?

A. I think so. I don't know of any record other than those bills and the memory of parties connected with the work.

Q. Now then, I will have to ask you, if that is the case, when that siphon was first put in what depth beneath the surface was the lower end of the siphon which was in the well. I am talking about the well end of it.

A. I can't answer that question directly because I only know it was in sufficient to get a good action -- a good suction.

Q. You are talking about the surface of one thing,-- you are ~~taki~~talking about the surface of the ground and I am talking about the water. What I am trying to find out is how far below the surface of the ground was the surface of the siphon in number of feet about?

A. Well, it would be a matter of conjecture with me.

Q. Give us about the number of feet. Was it 50, 100 or 150 feet beneath the surface of the ground? Give us as good an idea as you have.

A. That would be simply an opinion.

Q. You say it.

Mr. McKinley: Counsel does not seem to be ~~ex~~ as exact as he wants us to be.

The Court: Q. Do you know how far it was to the surface of the water from the surface of the ground?

A. When that gallery was dug it struck the water so that, if my memory is correct,-- it struck it so that the water flowed through. I wish I could be exact about this, but I don't know the distance. But I take it it must have been 60 or 65 feet below the surface of the ground where we had

the floor of the first gallery.

Mr. Waters: Q All right. That is good enough. That is good enough. Do you remember how far below the floor of the first gallery the suction end of the siphon extended?

A I don't know. I could only make a guess of what ought to have been good mechanical construction there.

Q All right. Now say it.

A I should say something like 30 feet

Q Don't you know that a siphon will not properly work with any more suction than an ordinary suction pump will, to-wit, about 25 to 27 feet?

A Well, I must have struck it pretty near then for a guess.

Q Don't you know it wasn't more than 25 feet?

A I take it that your remark is correct; but I told you to begin with that I couldn't give an accurate statement of this matter.

Q You are giving it as well as you can.

A I am doing the best I can.

Q So long as you are, we will get along first rate. Now then, what was the size of the siphon pipe-- the diameter of it as first put in?

A I can't give you the diameter.

Q Now do you remember whether you had any trouble with that siphon or not?

A No; I don't remember.

Q Don't you remember whether the other leg of it that went down into the tunnel or discharged into the other shaft,-- as to whether the other leg was too long and pulled the column

in two?

A. I don't remember that.

Q. Well, do you remember how howlong theother leg of the siphon was?

A. No; I do not. I know it discharged the water down there tremendously.

Q. Do you know whether the action of the siphon was such as that it constituted an overdraft on the well and caused the suction end of it to get air or not in a certain number of hours?

A. I don't remember anything of that kind.

Q. Do you remember what the priming apparatus of that siphon was-- how they started the siphon to going? You don't stick the pipe in there and the water commence to run through. Don't you have to prime it up at the goose neck?

A. I presume so, but that is what I paid very little attention to.

Q. Do you remember whether they had any apparatus to prime it?

A. Not at this time. My recollection is not sufficient for that. I know the siphon was there and I know it worked.

Q. You know that it did operate?

A. Yes, sir.

Q. Do you know that it continued to operate or whether it stopped operations?

A. As far as I know it continued to operate until we reset it below.

Q. Without harrowing this ground any longer, I will ask you if any engineer was in charge at the installation of it?

Did Mr. Trask install it or have it installed or inspect it as your engineer?

A No.

Q Who put it in?

A McConnel.

Q Is he in thecountry yet?

A He died some years ago.

Q Did you measure the water that came through the siphon?

A Not personally.

Q Did you see it measured?

A The water from that siphon and the whole development there was measured at the shaft immediately north of the 90-acre tract. I insucted our zanjero to measure it from day to day and our engineer measured it from time to time.

Q Is that point of measurement in the tunnel?

A Yes, sir.

Q And that point of measurement is below where several supplies have come in to the tunnel?

A Yes.

Q And have each one of those several supplies been measured or is there any measuring box or weir on each one of those supplies before it comes into the conjoint measuring box?

A No.

Q How can you state whether one is more or less or how much each one contributes?

A Well, we knew at that time-- we knew the amount of water by measurement that was flowing from that development.

Q From the sources other than the siphon?

A. Yes; before we turned the siphon on.

Q. Were they fixed quantities or fluctuating quantities?

A. They didn't fluctuate very much; they kept quite a steady flow.

Q. Who kept the measurements of those? Who has got them?

A. I don't know what measurements Mr.Trask has. I don't know what measurements Mr. Saunders has. Mr. Saunders during that time or that year was our engineer and he visited that locality frequently and advised as to the conditions there on the work.

Q. As a matter of fact isn't your information there something which has been received from someone else rather than from your own observation as to thequantity of water going through the siphon? In other words, isn't it hearsay instead of knowledge of your own?

A. The increase in the amount of the water flowing at the mouth of the Sadie tunnel after the installation of this siphon came under my immediate observation, as also the increase of the waters flowing at Ontario.

Q. Do you know how much to attribute to the siphon and how much to the other sources?

A. I can't give you the figures at this time.

Q. Now then, at the time when this siphon was operated, beginning at the first level, what was the difference if you know between the tunnel floor level at the nearest point to this shaft of no. 9-14 well? What was the difference between that level and the level of no. 9-14?

A. I can't give it at this time.

Q. You know that the water in well 9-14 was at the surface

Q. Did you; before you leaved the engine room,

do, Were they first condition or flashing condition?

A. They didn't flashes very really they just gave a steady flare.

Q. The last Q. questions of Lieut Tom was you could

A. I really have not understood a Tom's Q. I don't have this conversation by Counsel Q. Mr. Hawkins Do-

ing that Lieut. or Lieut you was not engineer and in middle watch leaving frequently and arrived at to the rendition where no Q. work.

Q. Is a matter of fact Lieut you testimony there were

Counsel Hawkins was asking Lieut Tomson also written Lieut Tomson was abscriptions so is impossible of answer crossexamination the witness. In other words, truth is Tomson Hawkins of Lieutenant Tomson.

A. The Lieutenant is the senior of the senior Tomson at the

Q. Is the Lieut Tomson after the Lieutenant of Lieutenant Tomson was asking up Lieutenant Hawkins, so also his answer of the senior Tomson at Lieutenant.

Q. Do you know how long he stayed on watch on the engine and was

Q. I really give you the figures at this time.

Q. Now then, at the time when this witness was leaving

Lieutenant at the first level, what was the difference of you have between the usual floor level of the engine, which is the usual, etc. I will ask that was the difference between that level and the level of the engine?

A. I don't know it at that time.

Q. The ship has an engine of about 2-48 mm. in the engine

of the water than the floor of the tunnel?

A Yes, sir.

Q You don't know how many feet difference or if any difference?

A I haven't a sufficiently well defined idea to be able to state it.

Q Give any idea at all on the subject.

A Nothing so accurate as you would desire.

Q Then give it to us as inaccurate as you may know it.

A I don't like to give inaccurate statements.

Q Have you no definite idea as to how much you lowered the outflow of water in well or from well 9-14 by bringing it out at the tunnel level as you finally did? That is to say, how much you lowered it from the point where it was in your siphon?

A I have an idea. That is, I have my own idea of the matter, but it is not by measurement.

Q But by observation, isn't it? You knew where the floor of the tunnel was and you knew where the elevation of the water was in well 9-14 before you lowered it?

A My memory is a little at fault about the level of the water in the well.

Q Give us an idea, at any rate, because may be all the balance of the men have forgotten too.

A I should judge we lowered it 40 feet or more.

Q When was it that you got it down to that level? About what date in 1903 or 04? When did you make that final connection to the level of the tunnel.?A.I would have to refer to data.

Recess until to-morrow, March 9, at 10 o'clock a.m.

[illegible]

J. M. McKINLEY.

IN THE

Superior Court

OF THE

County of San Bernardino

State of California

Cucamonga Vineyard Company, et al., Plaintiffs vs. San Antonio Water Company, et al., Defendants	Vol. 26. Tuesday, March 9th, 1909

INDEX.

I. BENJAMIN, Official Reporter

Tuesday, March 9th, 1909. Twenty-sixth day.

E. S. SHORT.

E. S. Short, a witness produced by defendant, being first duly sworn testified as follows:

DIRECT EXAMINATION.

By Mr. Jolliffe: Q Where do you live?

A In Redlands City, San Bernardino County.

Q Where were you living from 1882 to 1892?

A Living right in San Bernardino County.

Q What business were you engaged in at those times?

A Farming and teaming.

Q I will ask you whether or not you had frequent occasions to pass by the place known as Cucamonga and the Cucamonga Vineyard?

A Yes, sir.

Q I will ask you if you observed the condition of the stream known as Cucamonga Creek?

A I did, sir. I was passing to observe them because I had to go beyond the Cucamonga house to get water for my stock.

Q In the year 1884 and '5 --

A That was in 1882 and '3 that I have reference to.

Q What was the condition of things about the Cucamonga Creek at that time, as to whether or not there was any water in it?

A No, sir, there was no running water at all. We had to go beyond it to get water, and dip it out of a little spring to get water for our stock.

Q Where did you find water?

A I found it in the spring about a mile and a half or two

[illegible], [illegible] 1961.

C. A. [illegible].

C. A. [illegible], a witness produced by defendant, being duly sworn testified as follows:

DIRECT EXAMINATION.

Q. Mr. [illegible]? A. Where do you live?

A. In Oakland City, the [illegible] [illegible].

Q. Where were you living from 1960 to 1961?

A. Living right in the Terminal Hotel.

Q. That location were you employed in at Long Island?

A. Yes[illegible] and [illegible].

Q. I will ask you whether or not you had frequent conversations by phone by the plaintiff herein in December and [illegible] January?

A. Yes, sir.

Q. I will ask you if you observed the condition of the [illegible] when he returned home?

A. I did, sir. I was [illegible] to observe him because I had to go [illegible] his laundry [illegible] he got home for my [illegible].

Q. In the year 1960 and 61 --

A. That was in 1960 and 61 that I have reference to.

Q. Did you see the condition of [illegible] when he returned home? [illegible] that time, do you [illegible] if there was any [illegible] in it?

A. No, sir, there was no [illegible] [illegible] at all. He had to [illegible] to be [illegible], and [illegible] it was [illegible] a little [illegible] [illegible] [illegible] [illegible] [illegible].

Q. Have [illegible] you [illegible] [illegible]

A. I [illegible] in the [illegible] [illegible] [illegible] [illegible]

miles, I don't know the exact distance, to the right of where Mr. Hucotton lived on the side of a little knoll.

Q You went to the Hucotton place west of Cucamonga?

A West of Cucamonga.

Q And from there you went in what direction?

A To the north and to the right, and there he had a little spring dug out with a box in it, and I dipped the water out of the box and watered my stock, four mules and two horses.

Q Was there any water flowing --

A No, sir, not a bit. There was no water flowing in that is called the Cucamonga Creek.

The Court: Wait till the attorney finishes the question beforeyou answer.

Mr. Jolliffe: Q In the west branch of the creek at Hucotton's, was there any water flowing there?

A No, sir.

Q And all you could find was in this spring which had been digged out?

A Yes, sir.

Q Did you see anything about the condition of the vineyard at that time?

A I noticed the vineyard.

Q About what was the extent of that vineyard as near as you can tell?

A I just drew an idea, I suppose from the size --

Mr. Waters: We object to the answer, and move to strike it out, on the ground that it is not evidence of fact. He states he doesn't know.

The Court: Strike out that piece of the answer and start a-

fresh.

(Question read).

A I would judge it was about ten acres, according to my judgment, just guessing at it.

Cross Examination.

Mr. Babers: Q Let us talk distinctly, and slowly, so that we can all understand each other. When did you first begin teaming on that road?

A I commenced teaming there first in '60.

Q When did you say it was that there was no water running in Cucamonga Creek? What years?

A In '63 and '64.

Q And where was the road then as it passed by, or in regard to that Red Hill? Do you know what is called the Red Hill at Cucamonga?

A The Cucamonga building was on the right, and the barn or something on the left, right opposite to the vineyard, and then we crossed the creek we turned then back to the right again till you got up on to a hill where Mr. Ruxton lived.

Q Now, was the vineyard to the south or to the north of the road -- the Cucamonga Vineyard?

A The Cucamonga Vineyard?

Q Yes.

A I would call it to the south.

Q Do you remember the old John Baines house, the brick house?

A Yes, sir.

Q Where was it with reference to that?

A It was on the right as you went.

Q It was on the north?

A I don't know whether it was north or exactly what direction it was. It was on the right as you were going down, and you are going south when you go to Los Angeles from here. It was quite a little distance from the road -- from the main vineyard.

Q Was there any winery there at that time?

A The first time I went along there was -- in '63 and '64, there was none, as I told you several times. That was the extremely dry year.

Q That didn't affect the wine did it. (Question read).

A If there was I didn't know. I didn't make no inquiry about it. There was a winery after that , I know, but at the time I don't remember whether there was or not.

Q Was there water there in 1960 ?

A Yes, sir.

Q A stream of water running across the road?

A Yes, sir, running across the road in 1960.

Q And it ran across the road a very little distance beyond the house, didn't it?

A Yes, sir, quite a little distance.

Q At what time of the year were you there in '60?

A In December, January, February, March and April.

Q Didn't go after April in 1960?

A No, sir, not that I can call to mind.

Q Did you go there in '61?

A I might have, but I can't call to mind exactly when or how many times I did go there.

Q Did you go there in '62?

A Yes, sir, I was teaming occasionally from this town down to the beach, between '60 and the time of the drouth, '63 and '4.

Q Did you team regularly or only at indefinitel intervals?

A Only at times, as I got teaming to do.

Q In '61 did you go there?

A I couldn't say whether I did or not?

Q Did you go there in '62?

A Yes, sir, I was there in '62.

Q Did you go there in '63?

A Yes, I passed there.

Q And '64?

A '64.

Q '65?

A '65 and '66, and I was living right out here on Lake Line at the time.

Q Now I would like to know whether anybody was with you in '63 when you went along there and didn't find any water?

A If Willard Wells was here, he was with me.

Q Who else?

A Mr. Cox was with me.

Q Enoch Cox?

A Dick Cox.

Q Silas?

A Yes, sir.

Q A son of old Jack Cox?

A Yes, sir.

Q Who else?

A I can't call to mind -- well, there was Roscoe; old man

Meachan's son Joseph, and his son in-law Wells.

Q Was there anybody else besides Cox that is alive that was with you?

A Not that I know of.

Q Do you know whether the water was taken out for irrigation above or not?

A No, sir, I do not.

Q Don't you know that that year the water was taken out and used up there at/about the house of John Haines, the brick house?

A It must have been taken out about that time. It was there until that drouth, and then there was no water in the stream that people could get, crossing back and forth, for their use in watering stock.

Q Wasn't that during the drouth of '63 and '64 that that condition prevailed?

A '63 and '64 is my memory of it.

Q Didn't you state awhile ago that it was '63 and '64?

A Well, '63 and '64; may be it was. I came in here, if you will just wait a minute, in '60, and I was living on Case Line, and in '61 the Civil War broke out, and after that came this year of the drouth.

Q Wasn't the time of the drouth in '63 and '64 that you found no water there? Wasn't it the time of the drouth?

A Yes, sir.

Q Now you recollect in '61 we had a great flood here?

A Yes, sir.

Q Do you mean that that year the Cucamonga stream did not run?

A No, sir, I didn't say any such thing as that.

Q But it was in the year of the drouth, whenever that was?

A Yes, sir; that is, when I have reference to its not running -- in the year of the drouth -- '63 and '64.

Q Now then, you merely did not see any water crossing the road? Is that it?

A I remember crossing ditches where they were irrigating vineyards and things before the dry year.

Q But I am talking about this time when you found no water crossing the road. Did you go up to find out where the water was?

A No; there was no water running across the road in the old water ditches, or below the house.

Q All right. Did you go up stream to see where the water was?

A No, I did not.

Q You did go around on the west side of the red hill where Hubbotton lived, and there you watered your stock at a spring?

A Yes, that is what I did. I didn't go up to see whether there was a tunnel, or springs, or what they had above.

Q Or what they were doing up there?

A No, sir, I know nothing at all about it.

Q Do you know John Haines?

A Yes, sir.

Q Do you know when John Haines went to Lucerne and built that brick house?

A No, I can't tell exactly when the brick house was built, but it was along between '60 and '65 and '6.

Q And you don't know anything about the irrigation that he

did on the north side of the Red Hill, do you?

A I do not.

Q You don't know about his setting out the walnut trees up there after he built the brick house?

A No, sir. I never bothered my head about it. I simply passed backward and forward. I remember the time when John Haines was killed.

Q Don't you know that he had quite a farm there, and planted some summer crops, corn and beans?

A I don't know. He might have had.

Q Was Dick Cox with you when you watered the stock at Dubottom's?

A I don't remember whether he was or not.

Q Do you remember who was with you?

A Millard Wells and Joseph Meacham.

Q Was he a son of Lafayette Meacham?

A Yes, sir, but where he is, or any of them, I don't know.

Q And you thought there was about ten acres of vineyard?

A That is what I judged.

Q Don't you know there was over a hundred?

A There might have been, and there might have been four hundred. I never stopped to examine it. I was just driving along, and taking a glancing look at it, is the way I drew an idea, from what I could see of it.

Re-Direct Examination.

Mr. Jolliffe: Q You were asked whether or not the water had been taken out for irrigation. In passing along there did you see any cultivated lands except this little patch at the vineyard?

Q. Do you mean to say that you did not know that Miss Lily was married?

A. I did not.

Q. Did you know that she was living with her husband, Lord Ashton?

A. Of course I did. I was married to her husband myself.

Q. Do you mean that you married Miss Lily?

A. Yes, sir. I have been married to her for three years. I married her in Paris, and we have been living together ever since. We have been very happy.

Q. Have you been living in the same house, and passing as her husband?

A. I don't know. We really did.

Q. Was Lord Ashton with you when you rendered the bill at the Savoy?

A. I don't remember. He may be, or not.

Q. Do you remember the name you gave?

A. Gilbert? Alec and James Gaston.

Q. Was it a name of convenience?

A. Yes, sir. We chose it because, at the time, I didn't know Q. Did you thought there was about the name of Gaston?

A. Pure chance.

Q. Don't you know there was such a man?

A. There might have been, and there might have been not. I never thought. I never thought to consider it. I was just driving along, and taking a glancing look at it. In the end I came to him, they that I would use it.

Examination.

Q. Quickly. A. The very first thing afterwards or not, the name of Gaston, Alec and James, came out for introduction. Q. Question alone. Have did you ever see any published lists except this little book, at the theatre?

A I don't remember whether there was or not. I can't call to mind.

Q You passed frequently?

A I passed with my team.

Q And the vineyard is all that you remember of seeing?

A That is at the time of that drouth that I retired, because there was nothing growing nowhere.

Q Nothing growing anywhere?

A No, sir.

Q No cultivated lands that you observed, except this vineyard?

Mr. Britt: Objected to as leading.

The Court: Sustained.

Q How long did you continue teaming before you finally quit the business?

A I teamed backwards and forwards for about four years.

Q Did you have occasion to observe that stream any time along from '70 to '75?

A No, I don't remember taking any particular notice at that time, in '70 or '75.

Q Or in '71 or '2?

A I can't call to mind. I might have been through there, but I don't remember anything about what they were doing.

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L. H. EMERSON.

L. H. Emerson, a witness produced by defendants, being first duly sworn, testified as follows:

Direct Examination.

Mr. Jolliffe: Q. Where do you live?

A. San Bernardino.

Q. Where were you living in '64 and '65?

A. San Bernardino County.

Q. What business were you engaged in?

A. I was engaged in freighting.

Q. Did you have occasion to pass by the place known as Cucamonga Creek frequently, along that time?

A. Yes, sir.

Q. I will ask you whether you observed the condition of the stream known as Cucamonga Creek along during those years that you were teaming, in '64 and '5, and, if you did, state what you found there with reference to there being any water in it.

A. Well now, I couldn't state what years it was. I have noticed the stream, but to tell you what years it was I could not do it. I passed that country pretty often from '65 to '70 or '9.

Q. I will ask you whether or not you have passed there when it was dry?

Mr. Britt: Objected to as leading.

The Court: Sustained.

Q. I will ask you to state what the condition of the creek was when you passed there, and ask you whether or not it had water on it?

A I have passed there crossing the ditch just above Mr. Riche's at ~~the~~ ~~ti~~ different times when there wasn't water sufficient to water animals out of the ditch.

Q Did you get any water to water the animals at all?

A I have watered them out of a pool that he or somebody had dug out -- circled around by his fence.

Q About when was that, as near as you can tell?

A I couldn't tell you the date at all.

Q Can you tell within a few years?

A I don't believe I could, because I paid no attention to it, to make any minute of it.

Q Did you observe the condition of the stream at the west side of the Red Hill in what was known as the Rubotton place at that time or at any time?

A Yes, I have watered stock in there.

Q What was the condition of the stream near Rubotton's at the time when you failed to find any water near Cucamonga?

Mr. Britt: Objected to as carrying an assumption that the witness testified to something that is not stated.

The Court: The objection is sustained. It is just as well to avoid that sort of a question.

Q What was the condition of the stream at Rubotton's at any time when you passed there, with reference to having any water in it or not?

A I never found what you would call a regular flowing stream there. It was always very light. We had considerable trouble to water big teams, but I could water. But I couldn't really say that there was a good lively running stream there.

Q What years were you engaged in freighting, if you remember

A As near as I can remember, I started in freighting about '63 and continued that up to about '72 or '9 on this route here.

Q And it was during the time that you were freighting that you observed these conditions?

A Yes, sir.

Q Can you fix the time any more definitely, as to whether it was the early part or the latter part of your freighting that you observed these conditions that you have described ?

A I don't think I could correctly.

Cross Examination.

Mr. Britt: Q Mr. Anderson, at the time that you began freighting, was there a winery at Cucamonga, or at the vineyard -- the spot or locality where the winery is now?

A I couldn't say positively that there was right at the place, but my impression is that there was.

Q And the vineyard was there, of course, or there wouldn't have been a winery?

A Yes, a big vineyard. I have sampled that.

Q The grapes, or the wine, or both?

A I sampled the grapes mostly.

Q You were freighting or teaming between San Bernardino and some point farther west?

A Yes, sir.

Q Down at the coast?

A Sometimes to the coast, and sometimes just to Los Angeles, and other times to Spadra. That is before the railroad was ~~[illegible]~~ through.

Q Did you follow that business every year?

A Pretty much every year.

Q Summer and winter, or only summer?

A Summer and winter.

Q Was there a bridge on the road across the creek at that time?

A No, sir.

Q You know where the bridge is now?

A Yes, sir, across the big wash.

Q Just above the winery, isn't it?

A I don't know of any bridge there just above the winery, no.

Q Well, there was a bridge further over on the wash beyond the winery?

A Yes, sir

Q Was there a bridge at that place during the time you were teaming from '63 to '77, or something of the sort?

A I think not.

Q Do you know where the brick hotel was constructed, some distance above the winery called, I believe, the Mountain View Hotel?

A No, sir, I do not.

Q You don't know where that was?

A No, sir.

Q Do you remember such a building there at the time you were teaming, from '63 to '77?

A Whereabouts does that lay?

Q Above the winery some distance to the right of the present road as you go west.

A I don't remember that.

Q Where was this pool whereyou say you watered your stock at one time on some kind of Dicke, with reference to the winery Where was it with reference to the winery?

A It would be west of the winery. West and a little north

Q Was Dicke living there?

A Yes, sir.

Q Kind a sort of a pool or a pond?

A Just a place dug out, probably six or seven feet across. It wasn't deep at all.

Q And you watered your stock there?

A Yes, sir.

Q What sort of a team were you driving? How many animals?

A In the fore part of the business I was driving ten.

Q What do you mean by the fore part of the business?

A When I first started in. As I worked on, I increased my team.

Q As you worked on and increased it, how numerous were your animals?

A Before I got through teaming, I had 32 mules. I started in with 10.

Q When you watered your team at this pool, how many had you?

A I couldn't say exactly. I never watered them there only a few times.

Q Were other people teaming on the road?

A Yes, sir.

Q Did they water at this same pool?

A I think they did.

Q Was that in the winter time?

A Yes,sir.

Q It was a dry year?

A I don't remember whether it was a dry year or not. That is, for rain.

Q You don't remember whether it was a year of severe drought?

A I do not.

Q At the time that you failed to see water running across the road there in the Cucamonga stream did you go up above to the right among those trees and willows and other vegetation to see whether the water was running?

A I will tell you what I done. About the last time that I found it short there I wanted water pretty bad and I went up the ditch-- the old ditch-- north, probably 250 yards,-- may be not so far and may be a little further,-- to look for water.

Q What did you find?

A I found water.

Q Was that on the east side of the Red Hill or the west side?

A Do you call that Rubotton hill the Red Hill?

Q Rubotton lived to the west. The hill this side of the Rubotton place.

A That would be the Raines hill, where his building was.

Q Well, the Raines building was just this side of the Red Hill.

A No, I didn't go away up as far as the Red Hill-- not what I think you mean.

Q Was the place or run or wash or ditch up which you went and found the water on the west side of the Red Hill or on

the east side?

A. On the west side.

Q. You didn't go up on the east side?

A. No, sir.

Q. From 1883 to 1879 did you team along that road every summer?

A. Pretty much every summer.

Q. And did you generally find water in the stream there for your animals?

A. As a general rule, I did.

Q. During the summer season?

A. Yes, sir.

Q. On the east side of the Red Hill at those times, at the time you were teaming there, did you take any note how the water was being used for irrigation?

A. I did not.

Q. You never paid any attention to any Chinese gardens along there?

A. No, sir. I never ~~axxx~~ went up there. There was a big fence to fence that place off.

RE-DIRECT EXAMINATION.

Mr. Joliffe: Q. What was the extent of the cultivable land in that vicinity-- the land that was under cultivation at the time you said you found no water in the creek?

A. I could only state what I heard about that. I don't know of my own knowledge.

Q. I will ask you whether or not there was any cultivated land north of the road.

A. Well, there appeared to be up about this Haines building--

there appeared to be an orchard of trees. I never went right on to it.

Q How large an extent?

A I couldn't tell from the road.

Mr. Britt: Q What you call the Haines building was to the right of the ~~xxxx~~ Red Hill-- that is, east of the Red Hill?

A Yes, sir.

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J. C. BOWER.

J. C. Bower, a witness produced by defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Mr. McKinley: Q You testified that you were superintendent of the Cucamonga Vineyard?

A Yes, sir.

Q What lands did you have in charge there during the period that you were there? A From the Base Line down to the present Santa Fe railroad track.

Q Who employed you there?

A The Cucamonga Vineyard Company, ~~xxx~~ ~~xxx~~

Q And the Cucamonga Land and Irrigation Company?

A I was looking after their interests at the same time.

Q You had charge of all those matters there?

A Yes, sir.

Q Was there anybody else in charge of either place residing at Cucamonga?

Mr. Britt: That is calling for a conclusion of the witness.

Q Any resident present?

A. In the early part there had been a Mr. Dreyfus, and Mr. I. W. Hellman had been there. He would come there occasionally.

Q. About when did they cease? A. Mr. Dreyfus died in '06.

Q. You were employed by the owners of those lands, the individuals first, before the companies were organized? A. Yes.

Q. Now, referring to the lands above the winery, the lands upon which the springs were, what use did you make of those lands? A. I raised grain on it and I rented out some whenever I could. Part of it belonged to the Vineyard Company and the Land and Irrigation Company.

Q. Did you make any other use of it?

A. No, sir-- I planted some into vineyard above the road.

Q. How much? A. About 20 acres.

Q. Above the road? The San Bernardino road? A. Yes, sir.

Q. You testified to the falling off of the water in 1901. Did you make any investigation to ascertain the causes of the falling off of the water?

Mr. Britt: The question is did you make any investigation to ascertain the cause.

A. Not closely. I simply noticed that the water was falling off and I thought the cause of it was this pumping and developments on the north and west.

Q. What did you observe with reference to these developments?

A. The Fruit Land Company themselves put in pumps, but they didn't seem to--

Q. You observed those tunnels at the time?

A. Yes; but it didn't appear--

Q You needn't state what appeared. I only want to know the facts as to what you saw. What else did you see there?

Mr. Britt: I ask that the witness be allowed to finish his answer. He was asked to state what he saw.

The Court: You will have an opportunity to complete the answer on cross examination. Plaintiffs except.

Q What else did you see in the way of development wells or tunnels or anything of that sort put in? A Most of the developments were on the west side of the Red Hill.

Q What did you see down there? A I haven't paid much attention to it. I was attracted by the decrease of the water on the east side.

Q What did you see at all with reference to wells? Did you know anything about a Stowell well being put down? A Yes; I heard of it but I never paid no close attention to it.

Q You know of the fact that it was being put down? A Yes.

Q What did you observe with reference to what was called the Sixteenth Street well? A As far as I know, there is quite a number of Sixteenth Street wells. I don't know how many.

Q And you knew at the various times that the wells were being put down there that additional wells were being put down?

Mr. Britt. Objected to as irrelevant and immaterial.

Mr. Haskell: And leading.

The Court: The last objection will be sustained.

Q What did you know about the Sixteenth Street wells?

Mr. Britt: Objected to as irrelevant and immaterial.

The Court: Overruled. Plaintiff excepts.

A I paid very little attention to it.

Q What did you know? However little it was, tell us about it.

A They have been putting in pumping plants and were pumping water.

Q And you knew that at the time it was being done?

Mr. Britt: Objected to on the ground that it is leading.

The Court: It is rather leading.

Q When did you first know that?

A Well, I believe the first one had been put down by Mr. Stamm and Frankish.

Q Now state whether you knew anything about a well put down by the Ontario Power Company?

A I don't know who done the work outside of that.

Q State whether you know of any well being put down a little to the west of the Stowell well which you have mentioned?

A I never paid much attention to it.

Q Well, state whether you knew about it at all or not.

A Not that I could testify to.

Q State whether you knew anything about the Haskell well.

A Well yes, I knew -- I don't know exactly the time when they put it down.

Q Well, state whether you knew at the time the work was going on that it was being done.

A Yes, but not exactly the date or year; , I didn't pay enough attention to that.

Q What officers of these companies, the Cucamonga Vineyard Company and the Cucamonga Land and Irrigation Company directed you as to your work, and who did you communicate with generally as to matters there?

Mr. Britt; Objected to as calling for evidence not the best in its nature, as to who the officers of the companies were

The Court: The objection is sustained.

Q Who directed you as to your work, in any way

A Well, it was the Company; I communicated through the secretary when any important work was to be done;

Q. Have you ever been hurt?

A. Well, I believe the first one was when you came by to see Mrs. Dorothy.

Q. Now where was that you were supposed going to a ball and came by the Dorothy Tower Company?

A. I don't know who was doing the work exactly at that.

Q. Where exactly was you at at the ball when you came in contact with the wall of the Dorothy Tower Company?

A. I never paid much attention to it.

Q. Well, which direction you came from? In or out?

A. You know I could tell?

Q. Which direction you were walking about the ballroom?

A. Well yes, I know -- I don't know exactly the time when they put it down.

Q. Well, which direction you were at the time the wall was being done?

A. Yes, but not exactly the date or year. I don't pay as much attention to that.

Q. What attorney of your acquaintance, the Lawrence Company Company and the Phenomenal and Telephone Company attorneys as you as to your work and all you accumulated with your wife at to answer court?

A. Well, it looked to me calling for evidence and the best in the country, so to see the attorneys of the company were

The Court: The objection is overruled.

Q. Do attorneys you as to your work, to say your

A. Well, it was the Company. I accumulated through the attorney when any business were to be done.

Q State whether you ever made any communications to the company with regard to the tunnels and wells that were being put down there?

A Yes, sir, as soon as I found the water was decreasing, I thought on account of those wells, and I done it.

Q How did you communicate with them, orally or in writing?

A In writing.

Mr. McKinley: Although that is covered by our previous request, we call particular attention to those matters; if they have any of these writings, we would like to have them.

Q State whether you ever had any discussions with any one who came there to direct you?

A Yes, sir.

Q With whom?

A Mr. I. W. Hellman.

Q When did you have discussions with Mr. Hellman?

A I couldn't tell the year, but I believe it was in 1906.

Q What discussion did you have with him at that time?

Mr. Britt: Objected to as hearsay and incompetent and immaterial.

The Court: Is your purpose to connect it?

Mr. McKinley: We expect to show that Mr. Hellman was an officer of that company.

The Court: Objection overruled.

Mr. Britt: With the undertaking to connect it, I agree that it would be competent.

A I simply stated the facts that the water was decreasing, and that I believed that the cause of it was those wells and tunnels on the west and north of the property.

Q. Did you believe you were made any misrepresentations to the company when signing the benefit and policy that were fraudulent?

A. Yes, sir, as soon as I saw the value was inadequate.

I thought it looked well, but I knew it.

Q. Was the two-thousand-dollar item, credit or in written?

A. In written.

Mr. McCullough: Although that is covered by our previous request, we call particular attention to same anyway. If they have any of these written, we want also to have them.

Q. Didn't Mr. Tyler give you an explanation with any one of the same lines in direct you?

A. Yes, sir.

Q. Also again

A. Mr. C. C. Jackson.

Q. Then did you have discussions with Mr. Jackson?

A. I really'd call him yes, yes I believe it was in 1920.

Q. What discussion did you have with him on that line?

Mr. Tyler: Objected to as hearsay and incompetent and immaterial.

The Court: It goes subject to hearsay.

Mr. McCullough: We expect to show that Mr. Jackson was an affiliate of that company.

The Court: Objection overruled.

Mr. Tyler: Then the materiality is question is, I guess that it would be hearsay.

A. I simply asked Mr. Tyler that he gather the information, and that I believed that the value of it was lower with and without the work and worth of the property.

Q What did Mr. Hellman say in regard to it?

A He didn't give me much of an answer, -- not a satisfactory one.

Q Do you remember any more of the discussion?

A Oh, I spoke to Mr. Max Meyberg, Vice President.

Mr. Britt: We ask that the statement of the witness as to Mr. Meyberg being Vice President be stricken out.

The Court: Struck out.

Mr. McKinley: We expect to connect it later on by showing who he was. I have no objection to having that stricken out.

Q What discussion did you have with Mr. Meyberg?

A Nearly the same. It was about the decrease of the water on the east side of the Red Hill.

Q When was that?

A I believe it was during a period of years.

Q What did you say to him about the developments there interfering with the water?

A I never stated about anybody interfering with the water. I just simply stated that the water was decreasing, and as a cause I thought it was those wells and tunnels, where so much water was drawn from.

Q Did you mention which of those wells and tunnels you thought were doing that?

A Never mentioned any water.

Q Spoke of them generally, I suppose?

A Yes, sir. I have been told from time to time when they tapped a new well, how much more water they were getting on the west side of the Red Hill.

Q And did you tell Mr. Hellman that also? Did you report

to them the amounts these other people were getting?

A I only could tell them what I had been told.

Q Well, did you tell them what you had been told?

A Yes, sir. Not to Mr. I. W. Hellman, but to Mr. Meyberg.

Q Was there any one else connected with the company that you discussed it with?

A Mr. H. W. Hellman, when he was interested.

Q When did you have a discussion with him?

Mr. Britt: The statement relative to the connection of Mr. H. W. Hellman is objected to on the ground that it is the witnesses's opinion, and I ask that it be stricken out.

Mr. McKinley: We will consent to that. Let it be stricken out. We will connect it later on.

Q When did you have this discussion with him?

A I don't remember the date. He had been looking after the interests of his brother, Mr. I. W. Hellman.

Q About when was it?

A I believe it was about 1900.

Q What talk did you have with him?

A Oh, just about nearly the same thing as I have been telling the other people -- the water was decreasing.

Q Did you have any discussion with anybody else connected with the Company?

A No, I don't think so. I don't remember.

Q Did Mr. H. W. Hellman make any reply to your statements?

A Not satisfactory.

Q What reply did he make at all?

A He couldn't give me any satisfaction. He had to communicate first with his brother.

Q State whether Mr. Meyberg made any reply to you.

A All he could tell me was he would lay the matter before the Company at their next meeting.

Q Are you able to fix any more definitely as to the time you had the discussion with Meyberg, as to when it was?

A No, sir.

Q You don't know what year it was?

A No, sir; I couldn't tell you the year.

Q State whether it was near the same time that you spoke to the others about it?

A Oh, that might have been between a space of time of about three years.

Q State whether these conversations were before you left the employ of the Company.

A Yes, sir.

Q Which was the end of July, 1903. That is correct, the day you gave before? You gave the date you ceased to be there as the end of July, 1903. That is the time?

A Yes, sir.

Mr. McKinley: You don't know whether these reports are still in existence?

Mr. Britt: No, I have no information in regard to the matter

Mr. McKinley: That is all except when we have the reply as to whether they have the reports or not, we will seek to show the contents, if they have not.

The Court: Q You said in these conversations in which you referred to the supply of water failing, that you referred generally to some tunnels or developments. I would like to know definitely as you can give me to understand, in what way

you did make that reference. Did you point out the developments you referred to?

A No, in general; I just pointed out in general that there were other developments on the north and on the west side, and that I thought they were the cause of decreasing the water

Q The north and west side of what do you refer to?

A Of the Red Hill.

Q Did you point your hand in that direction when you referred to them, or did you describe them?

A I described it plainly enough; when I discussed it with them it was not in Cucamonga. I happened to be in Los Angeles.

Q But you referred to the Red Hill and the development on the north and west of the Red Hill?

A Yes, sir.

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JOHN MADDOCK.

John Maddock, recalled for defendants, previously sworn, testified as follows:

Direct Examination.

By Mr. McKinley: Q Will you state whether you know anything about the Haskell well being put down?

A Yes, sir.

Q When did you hear about that?

A Well, I don't remember no dates at all; but that is the only well I am acquainted with. I know from the time that Mr. Haskell was pumping it.

Q State whether you heard about the San Antonio Water Company's buying it --

Mr. Britt: Objected to as irrelevant, immaterial and incompetent.

Mr. McKinley: He is one of the predecessors in interest of the Old Settlers Water Company. It don't bind any one else but himself.

Mr. Britt: I was not aware that he was connected with it.

Q You heard these things before you transferred your water right to the Old Settlers Water Company, which was in 1902.

A According to my recollection there was no development done at the time before our transfer.

Q Before you transferred your water right in December, 1902 to the Old Settlers Water Company, hadn't you heard about it before that?

A There was no development done until after that. We surely transferred before that.

Q Do you mean when you organized your corporation and transferred your property?

A Oh, I thought you meant the time when we transferred to Lynch.

Q No. I mean the transfer to your own company, which you are conducting now. You heard about it before that, didn't you?

A Yes, sir, before that.

Q State whether you heard about the San Antonio Water Company buying the Haskell property.

A Yes, sir.

Q And improving the well?

A Yes, sir.

Q And conducting the water to Ontario?

A Yes, sir.

Q State whether you heard about that about the time that it was done.

A Yes , sir, I heard about that.

Q State whether you heard anything about the Stowell well at the time it was put down, and the sale of the 120 inches to the San Antonio Water Company?

A Yes,sir, I heard about it.

Q And state whether at the time a case was pending in regard to that you heard about it, the time of the McPherson case, seeking to attack that transfer was brought and being tried, whether you heard about it at that time?

A Yes, sir.

Mr. Britt: We object to that question as immaterial, making the objection for Mr. Waters, he being absent.

The Court: The objection is overruled.

Mr. Britt: Exception.

Mr McKinley: He has answered the question, but I am willing the objection should come in ahead of the answer.

Q State whether you heard anything about additional wells being put down in the neighborhood of the Stowell well?

A Yes, sir.

Q Did you know about the existence of the Power Company and its putting down a well?

A Well, I don't know the names, or anything about it. I know they put wells down there, but I don't know who done ir.

Q And the 16th Street wells, did you hear anything about them?

A Yes, sir , I have heard about them; yes, sir.

Q State whether you saw pipe lines being put down?

A Yes, sir.

Q While they were putting them down?

A Yes, sir.

Q Did you see the 16th Street wells and pumping plants?

A No, I never was up yonder at all.

By Mr. Britt: Q You didn't see any of these plants in operation, these pumping plants.

A Yes, I could see the steam from them, see the escape from them, but I don't know anything about any line of wells but the Haskell well; I never was around any of them, and know nothing about them, but the Haskell well.

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FRANKLIN COGSWELL.

Franklin Cogswell, a witness called by defendants, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Jolliffe: Q Where do you live?

A In Pomona.

Q Where were you living in 1877?

A Well, my ~~office~~ headquarters were down nearer the Santa Ana River; I was in the sheep business, but I rented the San Antonio portion of the Cucamonga grant as I understood it to be, the land south of the mouth of San Antonio Canyon, in the fall of 1876.

Q And during the years 1876 and 1877, state whether or not you had occasion to observe the condition of things around in the vicinity of Cucamonga, with reference to how much water there was there?

A. Well, the fall and winter fallow of 1876 and 1877 was a very dry year. There was water crossing the old stage road just west of Cucamonga -- the old Cucamonga -- I don't know anything about the new Cucamonga much -- I haven't been there but once or twice -- the old Cucamonga winery about a quarter or half a mile west of it; there was a wash there, and there was water; I watered sheep there. But in the summer of 1877 and 1878 I think that dried out at the road, but there was some water up among the sycamores above; well, there was a wash there, and water from that cienega which is above the old Red Hill there, flowed down in the brush there but I think not across the road, in the summer and fall of '76 and '77 -- in the fall of '77 -- was very dry.

Q. At that time the water did not reach the road, according to your recollection?

A. As I remember, it did not reach the road, and I have seen in the spring of the year quite a good flow of water there.

Q. Do you remember the condition of things at the other branch of the creek, the one immediately west of the winery?

A. That is the one I am speaking of, flowing immediately west of the winery -- immediately west of the hill.

Q. The other branch known as the east branch of the creek; do you remember the condition of that?

A. That had less water than the one west, as I remember.

Cross Examination:

By Mr. Britt: Q. On the east side, what Mr. Jolliffe has referred to as the east branch of the creek, did you ascend the creek up among the brush and trees and willows and sycamores, on the east side of the Red Hill, to see how much water

was flowing there.

A Not to see how much water was flowing there, but I had sheep all through the brush, and even up on the cienegas; on the hill to the east of that wash, that creek, I had my sheep up there several times, and through the brush from there west to where Ontario now stands.

Q Well, this brush that you speak of, or rather the trees at any rate, grew only along those washes, or on the west side to the one on the east side of the Red Hill? Isn't that true?

A No. There was some sycamores ~~trees~~ grew out some little piece from the wash as I remember.

Q Not very far?

A No, not very far.

Q The country west of the Red Hills and towards the present town of Ontario, was mostly a desert waste, wasn't it?

A Well, it didn't afford much feed; I will tell you that; I lost a good many sheep before I got back to the Santa Ana river; but we were glad to get brush or anything, and therefore I run them through the brush there; I was glad at that time to get anything that sheep would browse on, and I was in there, and I think there was some permanent water there; plenty to water sheep, up in that cienega; but I think there was none running across the road. Oh, there was a wash there that was at least 10 feet wide, where the old stage road crossed the road west of the hill.

Q And on the east side there was another, on the east side of the Red Hill?

A On the east side of the hill I don't remember any water flowing down across the road.

Q But there was a wash there?

A Yes, sir.

Q At that time had the winery been built?

A Oh, land, yes.

Q There was a large vineyard there, was there?

A There was quite a vineyard there, and old vines; the winery had been there for a good many years as I understood.

Q And there was a big vineyard there?

A Yes, sir, there was a vineyard there.

Q Wasn't it a big one?

A Well, not big, compared with the vineyards in that section of country now; I don't know how many acres. Yes, I would call it a large vineyard.

Q Was that vineyard fenced in?

A Yes, sir, it was fenced.

Q Were those buildings on the east side of the Red Hill fenced, the Haines hotel?

A On the east side?

Q Yes, weren't they fenced in?

A I don't remember any buildings on the east side of the hill. Do you mean north of the old stage road?

Q Yes. Wasn't there a brick hotel in there along about 1877?

A Oh, yes; there was a hotel on the north side of the road kept by a man named Smith; Yes, I remember it.

Q That was on the east side of the Red Hill, wasn't it?

A Yes. Right up from the old Cucamonga store.

Q Yes, I have heard so.

A Yes, I remember it now distinctly. I have not thought of

that subject; I have not been there much, and I have got to pick up the threads of memory a good deal.

Q Yes, that is 30 years ago and more. Now, alongside of that brick hotel, and immediately around it, do you remember whether there was an orchard and a quantity of cultivated land?

A I think there was something, and it seems to me there were some lime trees there.

Q And walnut trees, walnut orchards?

A Yes, sir, there were a few large walnut trees - old walnut trees there.

Q Was there a fence around those improvements, including those improvements and a tract of land adjacent?

A Well, I don't remember any fence; it seems to me there was a front fence there, but I don't remember any fenced in land; it might have run around by the --

Q Did you pay any attention to the cienegas above this old hotel on the east side of the Red Hill?

A The cienegas?

Q Yes, the cienega?

A Yes, I had sheep in there a time or two, and there was quite a cienega there; there was some spots of boggy land, because I had some sheep bogged in there once.

Q Were your sheep regularly grazing on those lands at that time, those cienega lands above the hotel? When I say above I mean to the north.

A Yes.

Q Did your sheep graze on those cienega lands?

A Well, I didn't have that rented, but I had them there;

I crossed there two or three times, or several times-- the spring and summer of '78 and '79 -- I had all the Cucamonga grant rented that lay east of the vineyard, two years; I had it rented two years, all that lay east of the vineyard -- well, all between there and the brush; it wasn't a great way and there was a lot of brush, and the brush commenced then, and extended clear to Colton pretty near.

Q You did not have rented the cienega land?

A No, I did not have any right to that.

Q Your sheep strayed in there, or got in there, and bogged down?

A Well, I crossed there a time or two -- camped there a time or two, or night, the time that I got the sheep bogged; the coyotes got amongst them.

Q How many sheep did you have in the neighborhood?

A I started in that August with 3500; I bought an interest in two bands, and put them together, and I came out the next year with about 2,000, I believe, or less than 2,000, and I don't remember how many I lost up in there, but I lost 12 or 15 hundred sheep; I must have had somewhere from 2500 to 3000 sheep at that time I think; I had a good big band, what we call a big band; we call 2,000 a good fair band.

Q That was in August, '77, was it?

A No, it was after that -- no; it was in the fall of '76, I am speaking of now. In '78 and '79, when I rented the eastern portion of the Cucamonga grant I did not have so many. I had about 2,000.

Q I was trying to get at the time when you noticed that the water was not running across the road.

A Well, that was in the fall of 1877.

Q A very dry year. A year of great drouth, wasn't it?

A Yes, sir, it was a year of great drouth. The two years following that I had the eastern portion; I was in Cucamonga a good deal then; in fact I traded at the Cucamonga store.

Q Now, in the fall of 1877, the dry year when you took your ~~hmx~~ sheep in there, where did you get water for your sheep?

A Well, in the fall of 1877, at the little stream west of the hill.

Q Red Hill?

A Yes, sir, the Red Hill; I never saw the time there that there wasn't water standing among the trees in little holes sufficient for sheep.

Q You had that land rented, did you?

A No; in the fall of 1876, I had the San Antonio portion rented; no, I never had that cienega rented. I didn't understand that my renting of the east portion of the Cucamonga grant included that cienega.

Q I was speaking about the stream on the west side of the Red Hill, if that was included in the portion of the grant which you had rented in the fall of 1877?

A I was allowed to water sheep there.

Q Were there other stock watering there also?

A No, not to any extent. There might have been a few cows for aught I know; I don't know whether any persons there had any cows or not, but there was no band of stock, nothing, only there might have been a few estrays.

Q Did you take your sheep into that district because you could obtain water in that locality for them?

Mr. Joliffe: To which we object as not proper cross-examination.

The Court: The objection is overruled.

A Why no; water was not all that sheep needed; I was after feed.

Q Water was a part of what they needed?

A It was a part of what they needed; and when I got up there of course I had to water; between there and the Santa Ana River it was a pretty long drive without water, and when I got up there I wanted water as bad as I did when I got to the Santa Ana River; I was scouting around in the valley for feed.

Q Well, there was no water between that point, that locality where you were accustomed to water the sheep and the west side of the Red Hill, and the Santa Ana River, was there?

A No.

Q What distance was that?

A Well, I don't know how far it is from there to the Santa Ana river.

Q Well, about?

A I don't know as I could give what would be called an approximate guess, but I should say ten miles.

Mr. Haskell: Q As I understand it, you rented the west side of the Red Hill in 1876?

A Yes, sir.

Q But you did not rent the cienega?

A I did not understand that to be included; I don't remember now who did claim it.

Q But you did water your sheep on the west side?

A Yes, sir.

Q Now, in '78 and '79, you rented the east side of the Red Hill, did you?

A Yes, sir.

Q But you did not rent the cienega portion on the east side?

A The cienega portion, no sir.

Q And that cienega portion covered two or three hundred acres, didn't it, or about that?

A Oh, yes, there was quite a piece up there above that Red Hill.

Q And you didn't run your sheep on ground where you did not rent?

A I did not; but I did cross it several times; but I did not stop there but one night; I remember one night of camping on that cienega.

Q You didn't water your sheep on the cienegas?

A Oh, yes. I crossed grants when I had to with my sheep, and took the chances of being sued.

Q Well, you crossed there about how many times?

A Oh, I don't know; not many times; because my -- because in '78 and '79, when I rented the eastern portion of the Cucamonga grant and staid there in the winter and spring, I did not cross that place but a very few times; and when the sheep did need water -- they didn't need water ~~and spring~~ in the winter and spring, but when the feed was dry they did, and I went down to the Santa Ana River.

Q So you observed the cienegas on the east side during x

'77 and '78 but very little.

A No -- just simply as I crossed it; that was about all.

Q Now, can you tell precisely at this time, what portion of the cienega you crossed, whether it was the upper portion or the lower portion? Wasn't it in fact the upper portion of the cienega?

A I think it was --

Q Don't you remember that the lower portion of that cienega and the main portion of the cienega is barred from crossing by a steep bluff on the west side 40 or 50 feet high in some places?

A Well, yes, it seems to me there was.

Q Well, then if you crossed it, it must have been by way of that road past the winery, or the very upper portion of the cienega? Isn't that true?

A No, I crossed on the lower portion, close to that hill; that is where I got some sheep bogged; I remember that distinctly, because I had some trouble there; that fixes it in my mind, the lower portion where it was boggy.

Q In 1879, wasn't there a large stream of water there in the summer time flowing out of that cienega, across that road

A I think in the fall of 1879 that it didn't cross the road, but it might have done so; that is my recollection.

Q Don't you remember that the winter of 1878 was a wet winter?

A Yes. The winter of -- No, -- Let me see -- '76-'77 -- yes; the winter of '78 was a wet winter.

Q The winter of '76-'77?

A The summer of '77 was the dry year. Five inches of rain

fell only.

Q And so practically, absolutely, there was no feed that started out of the ground anywhere, was there?

A No grass.

Q Started out of the ground that year?

A Very little.

Q What did start, started in November of '76?

A No; there was a spring shower that brought up a little fillaree, and that helped to save me some, -- in the spring.

Q Now, are you prepared to say that you had any knowledge upon which you can testify as to the quantity of water flowing in the east side stream during the years of '78 and '79?

Mr. Joliffe: Objected as not cross-examination, because he was not interrogated as to the waters on the east side stream during '78 and '79. The direct examination was addressed to the year 1877.

The Court: The objection is sustained.

Q How many times did you cross the east side stream in 1877?

A Oh, I can't say; I swung around through there on the road once or twice, in scouting for feed, and got out about where Ontario is now, and got into difficulties with Major Hancock out in there. Old Major Hancock, that claimed the whole country there, and as much more as he could get. He ordered me off. I remember swinging along the road that time with my sheep, up through Cucamonga.

Q All the observation that you made of that stream at that time was from the road, wasn't it?

A Yes, just passing over it; I didn't take any particu-

lar notice of it.

Q You didn't go up to see whether the stream had been diverted for irrigation or any other purpose, did you?

A No, I don't think I made any investigation. I had no occasion to, but I observed it only as I had to cross it with my sheep.

Q And you couldn't tell whether or not it was diverted for irrigation above the road, could you, as a matter of fact?

A As I have testified, I think it didn't cross the road; while I believe there was never a time that I didn't find plenty of water above among the sycamores; that is, on a line east and west with the hill; the road passes south of the hill; I didn't cross any red hill; I didn't cross the red hill only the last part of it; the red hill was all to the north of the ~~xxxx~~ stage road, and is yet I think.

(Last question read to witness).

A I don't remember any diversion for irrigation above the road.

Mr. Laskell: I move to strike out the answer of the witness as not responsive to the question.

The Court: The motion is denied.

A I am not going to say that I know that there was no irrigation there -- from that red hill.

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H. S. Milliken

H. S. Milliken, a witness previously sworn, recalled for defendants, testified as follows:

Direct Examination.

By Mr. McKinley: Q You are the son of L.B.Milliken?

A Yes,,sir.

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D. B. MILLIKEN.

D.B.Milliken, a witness previously sworn, recalled for defendants, testified as follows:

Direct Examination:

By Mr. McKinley: Q Did you have any information of the putting down of the Haskell well at the time it was put down?

A No, sir, I heard they were putting one down, is all.

Q State whether you heard of the purchase of that property by the San Antonio Water Company, and the deepening of the well and the putting down of another one, and the carrying of the water over to Ontario?

A I heard it talked over; I knew nothing about it.

Mr. Britt: Objected to as being many questions in one. We think it should be divided.

Q State whether you heard of the purchase of that property by the San Antonio Water Company about the time the purchase was made?

A I couldn't say.

Q State whether you heard of the fact that the San Antonio Water Company was deepening that well and putting down another well on that property.

A I couldn't say; I may have heard it; I can't remember.

Q State whether you heard anything about the carrying of water from that property over to Ontario by the San Antonio Water Company?

A Oh, I think I have, but I couldn't say positively.

Q And about the time that it was done?

A About the time they were doing considerable work up through that country.

Q State whether you heard of the 16th Street wells being put down by the San Antonio Water Company?

A I couldn't say.

Q Did you ever see those wells at 16th Street?

A Not to know them.; I wouldn't know them one from the other.

Q Did you see wells up there, pumping plants?

A No, sir.

Q State whether you knew about the putting down of a well by Stowell, and the selling of the same to the San Antonio Water Company by Stowell and the Cucamonga Fruit Land Company?

A Oh, I heard it, but I don't remember anything about it.

Q State whether you heard of the fact that a suit was brought to restrain the taking of that water by the San Antonio Water Company?

A I don't remember of it.

Q Never heard anything about the case, in regard to that at all?

A I may have heard of it but I don't remember.

Q The case that I refer to is called the McPherson case, McPherson against the San Antonio Water Company; did you

ever hear that discussed?

Mr. Britt: Objected to as irrelevant and immaterial.

The Court: Overruled.

Mr. Britt: Exception.

A I have, but I can't place it.

Q At about the time it was tried?

A I couldn't say; I don't know; I don't remember.

Q About how long ago did you hear that?

A That I couldn't tell anything about it.

Q Did you ever discuss with any one the proposition that wells were being put down and water carried over to Ontario by the San Antonio Water Company which decreased the water in the Cucamonga springs?

A I don't remember of it.

Q Don't remember of discussing that matter at all?

A No, sir.

Mr. Haskell: What is the object of this examination?

Mr. McKinley: Well, I have been doing this for two or three days, and I supposed the counsel would know by this time what the object was; the object is to charge Turner with notice of the developments, Mr. Milliken having testified that he was the agent of Mr. Turner.

The Court: You have pleaded an estoppel as against these parties.

Mr. McKinley: Yes, sir.

Q State whether you heard anything about the putting down the wells of Stowell.

A I am very sure I heard of those things -- of work being done from time to time.

A At the time.

Q Mr. Curtis, are you familiar with the Sunset Water Company's wells?

A I don't know.

Q Don't you know of a couple of wells in Cuesta [illegible] are owned by the Sunset Water Company?

A I have heard of those things; I never looked the matter up at all, to know anything about it.

Q Have you ever been to the wells?

A No, I don't remember that I have.

Q Did you hear about when they were being bored?

A I heard of there being improvements made.

Q About the time that the improvements were being made?

A I think there were men at work.

Q Did you see the pipe line that was being constructed by the Sunset Water Company at the time it was being constructed?

A I don't remember it.

Q You don't remember it?

A No.

Q Well, you knew of a pipe line being constructed did you not from the Sunset Water Company's wells to the house of the stockholders of the Sunset Water Company?

A No, I am not acquainted enough with that range of country to know and don't know.

Mr Conner, Q Do you know where a well belonging to the Lemoore Water Company is situated?

A. Yes, sir.

Q. Do you know they have a well from which they pumped some years to irrigate?

A. No.

Q. Did you ever hear of that well?

A. I don't know; I may have but I don't remember.

Q. Did you ever see the pipe line being constructed from the neighborhood of the Red Hill to Ontario?

A. No, I don't remember that I have.

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George L. Bryan, a witness called for defendants being first duly sworn, testified as follows:

Direct Examination.

Q. Mr. McKinley, where do you reside?

A. I reside at my ranch up here side of Ontario.

Q. You are one of the intervenors in this case?

A. Well, I don't know whether I am or not; there are so many of those cases I don't know whether I am or not.

The Court, Are you one of Mr. Hewitt's clients?

A. Yes, sir.

Mr. McKinley, where is the land in controversy which you claim this water right? Where is that land?

A. Why, it is on Turner Avenue and San Bernardino road, corner of Turner Avenue and San Bernardino road; that is the piece of land that we have in dispute.

Q. That is the piece of land for which you claim water

A. Yes, sir; we used to.

Q. How long is it since you received any?

A. Well, I guess it is about six or seven years since they shut it off.

Q. State whether you know anything about the putting down of the Kimball well?

A. What I have heard about the Kimball well.

Q. When did you first hear about it?

A. Oh, I don't know; I have heard about it for quite a little while.

Q. State whether you heard of the purchase of that well by the San Antonio Water Company?

A. Well, I couldn't say in regard to that; I don't know.

Q. State whether you heard that the San Antonio Water Company deepened that well and put down another well and that water from there to Ontario?

A. I couldn't say; I know they were sinking some wells over there, but I never was familiar with them.

Q. You did know that the San Antonio Water Company was sinking some wells over in the neighborhood of the Springs?

A. Yes, sir.

Q. How long have you known that?

A. Well, ever since they started in to sink the wells; I have been by, but I never stopped to see what it was. But I always heard that it was the San Antonio Water Company that was doing the work.

Q. State whether you saw pipe lines which were being constructed?

A. No.

Q You never noticed them?

A No, sir.

Q State whether you heard anything about a case pending in this court in which it was sought to enjoin the taking of water from that region over to Ontario?

A Yes, sir; I have heard there was such a case.

Q Did you hear of that about the time it was tried?

A No.

Q When did you hear of it?

A I couldn't say.

Q A good many years ago?

A No, I don't think it was over three or four years ago since I heard the first talk.

Cross Examination.

Mr. Haskell, Q You are still getting some water?

A I get some water down at the ranch that I never had no trouble with, four inches of water on the main ranch, section 12.

Q That comes through the main pipe line from the Cucamonga Water Company?

A Yes, sir.

Q Through their system?

A Yes, sir.

Mr Curtis, Q Are you acquainted with the Bonsall Company's wells?

A No, sir.

Q Do you know a Bonsall Water Company that is operating at Cucamonga?

A. I know there is such a company up there, but I couldn't show you which well belonged to them to save my life; I never kept no track of them; there are so many wells up there, and never had no interest in the sinking of them, and never bothered about them.

Q. Didn't you hear about them sinking these wells a few years ago?

A. Why, yes; I have heard that there was such a company that had wells up there, but I couldn't tell you where they are.

Q. Were you not invited to become a member of the Forest Water Company?

A. I have heard that there was such a company there, yes.

Q. Didn't you know that company was being organized a few years ago for the purpose of sinking wells to irrigate their lands?

A. Well, I had that general opinion of it but I don't know how I got it; I suppose just by hearing the people talk; I don't know anything about the irrigation.

Q. Were you not invited to become a member of the organization?

A. No, sir; not that I know of.

Q. But you did hear the matter talked about at the time they were being organized?

A. Yes, sir; I heard there was a company up there of that name that were sinking wells, and I think I have heard they had a pipe line down to their places; but I am not certain about that; I don't know where the pipe line runs or who the people are that are using that water.

Q. Did you do remember of hearing that they were sinking their wells and constructing a pipe line from the wells to the lands of the stockholders?

A. Yes, sir; I have heard that.

Mr Conner, Q. Do you know the region of country where the Harmosa Colony is situated?

A. Yes, sir.

Q. Do you know where their well is situated?

A. No, I never have seen their well; they had water running from the old [illegible] a break above, when I was up there first, and I always supposed they got their water there.

Q. Did you ever hear of the Harmosa Water Company sinking a well to irrigate the Harmosa Colony?

A. No, I didn't know anything about that; I haven't been up there for years.

Q. Did you hear of their water being short some years ago, and their sinking a well to secure additional water?

A. No, sir.

Q. You don't know that they have a well?

A. No, I don't know anything about it.

[illegible] CROSS-EXAMINATION

Mr McKinley Q. The water that you receive on your place below, you receive on stock of the Harmosa Water Company?

A. No, it is from a seed.

Q. From a seed?

A. Yes, sir; I don't own any stock in the Water Company at all; I got a seed to four inches of water for that place.

Q. For the place below?

A Yes, sir.

Q What have you for the deed of this place ?

A I didn't have nothing; I had a deed when I bought the 20 acres from Mr Kuhlman, I got a deed to the land with the water right, but the water right at that time was not established, how much it would be, but we finally supposed we were getting an inch to ten acres; we used the water - first we used the water out of the ditch; we were at the lower end of the ditch at that time; and then finally they put in pipe and put a hydrant in the corner, and we used it there for some - I don't know - six or seven years - before they shut it off.

Q Who put those improvements in?

A Why it was Mr Lynch was the general manager.

Q Is that place planted in anything?

A Yes, sir; we have got grapes and some oranges and lemons - a few.

Q What do you irrigate with?

A Up to the time I sold it- I have sold it -- up to the time I sold it I let it go there for several years without any water and the trees pretty near all - they got sick and some of them died; the vines stood it better than the trees did.

Q Had they been irrigated before, the vines?

A Yes, sir; they had been irrigated.

Q They stood it better than the trees: What condition were the vines in when you sold it?

A Well, they got down, up there - about fifteen acres of vines, they got down so they didn't produce very much;

probably half a ton to the acre.

Q Who did you sell to?

A Mrs. Field.

Mr Britt, Q Where is that vineyard situated.

A That is Turner Avenue; it is inside of the old ranch; It is Turner Avenue and San Bernardino road; I don't know the section they call that; in fact I don't think that land is laid off in sections is it?

Q Where is it with reference to the Cucamonga Vineyard Company's vineyard?

A It is about, I should judge a half a mile east of the old Cucamonga Vineyard on the San Bernardino road.

Mr McKinley, Q Where does the water come from that goes to the other place?

A Through the Cucamonga Water Company pipe line.

Q Do you know what place it is taken out?

A Taken out right at my corner.

Q I mean where it is put into the pipe?

A Well, they used to bring it there from the store - from the reservour, and there wasn't pressure enough, and they brought it from there.

-o-

probably half a ton in the sack.

Q. How did you call out?

A. Are Jack.

Q. Which is that Yangtse alluvial.

A. This is Tanner Lawson. It is hidden at the old Canadian in the Jerry corner and the Jerusalem vault. I don't know the section they will look in then. I don't think that is half of it. Anything is 12?

Q. There is a well reference to the Jerusalem Company Company's property.

A. It is stuck. I never gone a half a mile east of the Jerusalem Company on the Sun Extension vein.

Q. Yesterday, I think you the other one Jerry line. Is the other place?

A. Through the Jerusalem Sun Company pair line.

Q. Is you ever work down it on Sunny part?

A. Yahoo and right at my corner.

Q. I know where it is you have the place.

A. Well, they used to drive it down five fan drift - five fan crosscut, and then wasn't anything enough, and they dropped it five down.

SILAS COX

Silas Cox, a witness called by defendants herein, being first duly sworn, testified as follows:

Direct Examination.

Mr Zolitis, Q. Where do you live?

A. At what they call El Cuneo, in San Timoteo Canyon.

Q. Where were you living in the year '64 and '65?

A. In the year '64 and '65 I was in Utah, but I was traveling down in that part of the country every winter.

Q. I will ask you whether or not in the year '64 or '65, or thereabout, that you had occasion or did pass through the locality where the Santa Ana Canyon is?

A. I passed there a few times during the winter season of '64-'65, and '64; all the winters from '61 to '65, only during the winter season.

Q. During the winter season from '61 to '65?

A. Yes, sir.

Q. I will ask you if you passed through that locality in '71 or '72?

A. Yes, sir; I was on the road there very frequently.

Q. And whether or not you passed through that locality in the years of '71 and '72?

A. Yes, sir; I did.

Q. Now, you say that the condition of the Santa Ana Creek in September of 1871, if you remember, as to whether it had any water in it or not?

A. In '71, I did. It had water in; was down around the road right by what we call the Bernardino store.

Q. I will ask you further if not you at any time observed

that creek during any of the years that I have asked you about, when it did not have water in it, and if so state what year it was as near as you can?

A. In 1877, I would judge, as near as I can remember, during the latter part of the summer, say August, I crossed it, and there wasn't any water in the ditch -- where we call the ditch was where the water always ran down to the old vineyard there.

Q. Did you notice the creek itself where the water flows in flood times as to whether there was any water in it?

A. There was none.

Q. There wasn't any water?

A. At that time; no, sir.

Q. I will ask you whether or not you noticed the condition of things in the creek immediately west of the Red Hill-- you know that creek immediately west of the red hill?

A. Yes, sir; I knew of it.

Q. State whether or not there was any water in it at these times?

A. There was water in that because I went to that creek to camp; I went from here there, and I went to old Cucamonga and I found no water, and I went on over to the other creek or to the other watering place, we called it.

Q. About how much water was flowing there if you remember?

A. Oh, I can't say; all we were looking for was sufficient to water our teams and we found it and I paid no attention to it.

Q. Was there a flowing stream or was it in pools holes?

A. If I remember right there was a little flowing stream at that time, but I wouldn't be positive as to that.

CROSS EXAMINATION.

By Mr Pritt: Q In 1873 I understood you to say in the latter part of the summer you observed there was not any water in the ditch leading down to the old vineyard?

A Yes, sir.

Q Was that an irrigating ditch?

A Yes, sir; I suppose that was the main irrigating ditch that they had to lead the water down into the vineyard and the land below.

Q Had you been accustomed to seeing the water flowing in that ditch? And the water usually flowed in that ditch in the irrigating season?

A Yes, sir; that is the only time I ever saw it dry was that one time.

Q Did you go up the ditch above, to the right, to see whether the water was taken out further up?

A I went up about one hundred yards to see whether there was any water in the holes to water our horses with and I found none, so I came back to the wagon and drove on over to the other place.

Q At that time was there an orchard of walnut trees, lemon trees or lime trees, and otherkinds of trees in the neighborhood of the old brick hotel?

A I think there were, but I paid no attention to that; in fact I never did know much about it; I never was much up that way.

Q You don't know but that the water of the creek on the east side of the Red Hill was being used for irrigation up there?

A I couldn't say I am sure.

Q You didn't go up to see?

A No, sir; I didn't go up that far to see.

Q You spoke about driving from what you call Old Cucamonga around on the west side of the Red Hill to camp because there was water there?

A Yes, sir.

Q What season was that?

A That was in 1877; the same year and the same trip.

Q Was that a season of drouth? That is did it follow a winter of less than the usual rainfall?

A I think it was a very dry winter, if I remember properly.

Q This place that you call Old Cucamonga is this side of the Red Hill I suppose?

A Yes, sir.

Q And what is the distance from Old Cucamonga to the Red Hill?

A Oh, it is only just across the gulch, a couple of hundred yards, till you strike the point of the hill, the south point.

Q Had you been accustomed to camp at the place you call Old Cucamonga?

A Yes, sir; that was our old camping ground. Most generally we camped there all the time.

Q Had you always found water there for your camping purposes and to water your stock and your other trips?

A Yes, sir; with the exception of this one time that I speak of.

Q Winter and summer?

A. Yes, sir; let me say one word, or make one statement; in the winter time there was water running down this wash and we used to stop on the other side of the wash, because there was more rock, right on the south end of the red hill.

Q. Was the road at that time around below or south of the red hill?

A. Yes, sir.

Q. Did the road run in the bottom or level land? Did not cross over the slope of the red hill?

A. No, sir; it went right around the point of it, just on a gradual line; probably a little uphill going the other way for a short distance.

Q. At the time you speak of did the winery have confiscated to the left of the road to you as you go down,

A. Yes, sir; south of the road I called it.

Here the court takes a recess until 1:30 p.m.

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Afternoon Session.

Mr. Britt: Will you come here to this map for a moment? This is plaintiff's exhibit 77. Now you notice that along here is marked the San Bernardino Road to which I point on the map.

A Yes, sir.

Q This figure upon which I lay this pencil on the chart, is drawn to represent the resrvoir to the north of the road and close to it?

A Yes, sir.

Q You're acquainted with that locality at Cucamonga?

A I am acquainted right along on the road.

Q And just below the San Bernardino Road, to the south, there is indiated by the word "winery" inclosed within certain lines, the locality of the old wine making establishment or building?

A The old Gainsevain Winery as we used to call it.

Q You know where that is situated?

A Yes, sir.

Q This spot here, to which I point, represents as I understand, the present bridge in the road across the wash, coming down from the east side of Red Hill?

A That is west of the Gainsevain building?

A Yes, sir.

Q Now, this San Bernardino Road is the road along which you were accustomed to travel at the times which you have described when you did your teaming?

A Yes, sir.

Q You spoke about camping or stopping at Old Cucamonga.

Was this the locality, this winery and the neighborhood of the reservoir, the locality which you called Old Cucamonga?

A Right near that old Sainsevain house is what we called Old Cucamonga.

Q Where was that relative to the winery?

A That is what I term the winery, the old Sainsevain winery.

Q Was that the place which you made during the days you were teaming your camping place?

A Usually.

Q That is, in going from San Bernardino to the coast?

A Yes, sir.

Q Did you make that a camping place regularly because there was water there for the stock?

A Yes, sir. That is the occasion for making that the camping place.

Q And when you were coming from the other direction, from the coast, with your teams to San Bernardino, did you make that the usual camping place?

A Generally so. Sometimes we camped on the other side of the Red Hill. It depended on the time in the evening when we struck camp, but mostly we came to that same place.

Q Was that for the reason that you found water there for your stock and your men?

A Yes, sir.

Q Did you have more than one team and wagon in the freighting service?

A Not in those years. Not after '66. After '66 I drove just one team.

Q Up to '66 did you have more than one team?

A Up to '86 I used to have two 8 and 10 mule teams, but I only made these trips during the winter season.

Q In 1872, in the fall of the year, when, as I understood you to say, you crossed down there one time when the water was not running down the channel, what sort of a team were you driving then?

A I was driving just a single pair of mules that trip. That was winding up my teaming.

Q That was the last teaming you did?

A Yes. After that year, I never have teamed since.

Q You remember that ditch where you were accustomed to see the water flowing down to the vineyard below the road -- about where that crossed the road with reference to the winery

A If I remember right, it was a little to the west of the winery, right near the winery.

Q In those times, that is, in 1 72, was there a bridge across the wash where the bridge is now situated, a little north-west of the winery?

A No sir, no bridge there.

Q The road crossed then where the bridge is at the present time?

A Somewheres near it; probably a little below.

Q I understand you to say that at that place you usually found water running?

A In what I call the ditch immediately west of the Rainsevain house.

Q Did you usually find water running in that channel of the creek?

A Not in the summer season. Just during thewinter season

and early spring.

Q In the summer season it was taken into the ditch for irrigation?

A That is what I suppose.

Q It was running in the direction of the old vineyard?

A Yes, sir.

Q Now, I requested that you be here at this time, supposing that Mr. Waters would ask you some questions.

Mr. Waters: Q You didn't go up above, in 1872, to see where the water was running?

A I went up I suppose about a hundred yards when I stopped. I found there was no water in what I call the ditch, and left my team and walked up the ditch probably a hundred yards, and found no water, and I drove on across west of the Red Hill.

Mr Haskell: Q Don't you remember that there were crops of potatoes and corn and beans, and such small crops planted and growing on the cienega north of that road?

A I never went up there to look.

Q And you don't know whether there was any water turned out on that tract for irrigation?

A I don't know, but I didn't suppose there was any up there. I didn't know anything about it.

Q You don't know?

A No, sir, I can't answer anything definite about that at all.

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O. F. FREEMAN.

O. F. Freeman, a witness produced by defendants, being first duly sworn, testified as follows:

Direct Examination.

Mr McKinley: Q Where do you reside?

A Cucamonga.

Q How long have you lived there?

A Three years.

Q You are Secretary of the Old Settlers Water Company?

A I am.

Q Have you the minutes?

A Yes, sir.

Q Will you state from the minutes, the officers of the Company at the different times since its organization?

A The different years -- at present --

Q State who the first board of directors was, the President and Secretary.

A That goes back to 1902.

Q Yes, sir.

A By record, it gives D. R. Kilbourne, Frances Smith, Feron, Hall and Vincaid.

Mr. Waters: I think you can get that readily out of that same book. I think you will find the first board of directors were named in the articles of incorporation, and that ought to be in the first pages of the book.

A It ought to be, but it aint.

Mr McKinley: Q That is L.J.Vincaid?

A Yes.

Q Will you turn to the next meeting, and state who the di-

rectors were? We may get the initials.

A The next one is W.J.Kincaid, A.Stinchfield, A.Southworth, F.G.Smith, and D.R.Kilbourne.

Q I will read the minutes. (Reading) "Nominations for Board of Directors -- " These are the minutes of January 6th 1903?

A Yes, sir.

Q (Reading) "Nominations for Board of Directors: W.J.Kincaid, nominated F.G. Smith. A.Stinchfield named A.Southworth. F.G.Smith nominated W.J.Kincaid. A.Stinchfield nominated D.R.Kilbourne. A.Stinchfield moved nominations close. Seconded by Kincaid and carried. A. Stinchfield made a motion that the secretary cast a ballot electing the five nominations directors. T.L.Hall seconded the motion. Motion carried and secretary cast the ballot."

The next minutes are the minutes of the Directors' meeting at which the officers were elected -- January 6th.

A This is minuted of the Board of Directors.

Mr. McKinley: We offer that. (Reading) "Directors' meeting January 6th, 1903. A.Stinchfield moved that D.R.Kilbourne be elected President. A.Southward seconded the motion. Carried. W.J.Kincaid moved A.Stinchfield be elected Vice President. F.G.Smith seconded the motion. Carried. W.J.Kincaid moved C.Southworth be elected secretary.F.G.Smith seconded. Motion prevailed."

Q Will you find the minutes of the next Stockholders' meeting.

A Here they are.

Q These are the minutes of January 5, 1904 of the stockhold-

ers?

A. Yes, sir.

Mr McKinley: I willoffer a portion of these minutes in regard to the Directors. (Reading) "Nominattions for Board of Directors: W.H.Denham nominated J.B.Fox. W.H.Denham nominated Mr. Horsh. Mr . Horsh nominated W.H.Denham. D.R. Kilbourne nominated F.G.Smith. J.B.Fox nominated W.J.Kincaid; W.J.Kincaid nominated D.R.Kilbourne. S.P.Kincaid nominated John Maddock. S.P.Kincaid nominated A.Stinchfield. J.B.Fox moves that nominations close. John Maddock seconds motion. Carried. Secretary cast ballot as instructed by President. The President makes statement that a majority of the stock of the corporation is present. The ballot being cast, the following directors were elected for the year 1964: J.B.Fox W.J.Kincaid, John Maddock, F.G.Smith, D.R.Kilbourne."

Q. The next minutes are minutes of the Board of Directors?

A. Yes.

Mr. McKinley: I offer a portion of them. (Reading) "Directors meeting of the Old Settlers Company, Cucamonga Hall, January 5, 1964. John Maddock moves that Mr.J.B.Fox be appointed President of the corporation. W.J.Kincaid seconds. Motion carried. D.R.Kilbourne nominates F.G.Smith as Vice President. W.J.Kincaid seconds. Motion carried. W.J.Kincaid nominates C.H.Kilbourne as secretary. J.B.Fox seconds. Motion carried.

Q. The next is the minutes of the Stockholders' meeting of January 4, 1965?

A. Yes, sir.

Mr. McKinley: We offer a portion of that: (Reading) :

"Nominations for Directors being in order, the following nominations were made: "Mr. Morsh nominated by Moore. Fox nominated by S.F.Kincaid. W.J.Kincaid nominated by E.P.Norwood. D.R.Kilbourne nominated by W.J.Kincaid. Mrs.F.G.Smith nominated by D.R.Kilbourne. Moved by A.Stinchfield, and seconded by Berry, that nominations be closed. Carried. Moved by Berry, seconded by W.J.Kincaid that the rules be suspended and the secretary instructed to cast the xxxtvote of the entire stock of the corporation represented for the above named persons for directors for the ensuing year, which was carried and so voted."

Q The next minutes of January 4, 1905 are the minutes of the Board of Directors at which officers were elected?

A Yes, sir.

Mr McKinley: I offer the portion as to the election of officers. (Reading) "Nominations for President, Vice President and Secretary being in order, Fox nominated by W.J. Kincaid , seconded by Morsh. W.J.Kincaid nominated by D.R.Kilbourne, seconded by Mrs. Smith. Nominations declared closed. Ballots spread, and J.M.Fox having received three out of the five votes, was declared elected. Moved by E. Morsh and seconded by Mrs. Smith that W.J.Kincaid be made Vice President. Carried. W.J.Kincaid nominated E.Morsh secretary. Seconded by F.G.Smith. Carried."

Q These are the minutes of the stockholders' meeting of 1906?

A Yes.

Mr. McKinley: (Reading) "Nominations were next in order, and the following stockholders were nominated: J.M.Fox,

D.R.Kilbourne, T.L.Hall, Mrs.F.G.Smith, E.Horsh, and T.J. Lincaid. On motion of T.L.Hall, seconded by E.Horsh, that nominations close. Motion carried. President appointed Mr. Oak and Mr. Stowell as tellers. Result of ballot"--

I suppose it is not necessary to put in the number of votes - "The president declared D.R.Kilbourne, T.L.Hall, J.B.Fox, E.Horsh, S.G.Smith elected as Directors for the ensuing year.

Q The next ensuing are the minutes of the Directors, at the time that the officers were elected?

A Yes, sir.

Mr. McKinley: I offer this portion. (Reading): "Motion by T.L.Hall that J.B.Fox act as President for the ensuing year. Seconded by E.Horsh. Motion carried. Motion that Mrs. F.G.Smith be our Vice President. Seconded by T.L.Hall. Motion carried. Motion by Mrs. F.G.Smith that T.L.Hall be our secretary. Seconded by E.Horsh. Motion carried.

Q The next is 1908.

Mr. McKinley: (Reading) "A Stinchfield, D.R.Kilbourne Mrs.F.G.Smith, John Maddock, J.B.Fox, and the officers, A. Stinchfield,President, Mrs. F.G.Smith Vice President, C.T. Freeman Secretary."

Q Who were they in 1907?

A J.B.Fox, D.R.Kilbourne, Mrs.F.G.Smith, E.Horsh, John Maddock.

Q Who were the officers?

A J.B.Fox, Mrs.F.G.Smith.

Q J.B.Fox, President?

A Yes, sir. Mrs. F.G.Smith, Vice President; C.T.Freeman, Secretary.

1909: Directors, A. Stinchfield, D. R. Kilbourne, John Maddock, J. J. Brand, L. . Oliver. Officers, A. Stinchfield president, John Maddock vice president, O. F. Freeman, secretary.

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T. L. HALL.

T. L. Hall, a witness produced by defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Mr. McKinley: Q. Where do you reside?

A. Upland.

Q. How long have you resided there?

A. About two years.

Q. Where have you resided before that?

A. I moved to Cucamonga the 30th of May, 1901, and lived there for five years and I sold outover there and went back east a year and came back to Upland.

Q. When did you acquire your property at Cucamonga?

A. It was about the 24th of May, 1901.

Q. Between that time and your conveyance shown in evidence here to the Old Settlers Water Company in December, 1902, did you have any information as to the fact that the Haskell well was being operated by the San Antonio Water Company, and water taken to Ontario?

A. I heard a good many reports about some of those things that I didn't know anything about. To state from memory, I couldn't repeat them.

Q You heard that wells were being operated there and the water taken away?

A Yes, sir.

Q As to the general particulars you don't remember?

A No, sir.

Q You are the same Hall who was one of the first directors of the Old Settlers Water Company?

A Yes, sir.

Q Your initials were not given, and I ask you to identify it. Did you observe the construction of any pipe line between Cucamonga and Rich Hill country and Ontario?

A West from the Red Hill I noticed from the roads as I passed along that they were laying a large pipe up there. I Didn't go up to see it.

Mr. Britt: This line of testimony is offered as affecting the Old Settlers Water Company?

Mr. McKinley: Yes, sir.

Mr. Britt: And not the two Cucamonga Companies?

Mr. McKinley: In so far as the general knowledge over there it may have that effect.

Mr. Britt: I don't think the testimony is competent against the Cucamonga Companies.

Mr. McKinley: I do not understand that there is any limitation. We understand that you are not waiving any question.

Mr. Britt: I had understood that this line of testimony was offered as affecting the Old Settlers Water Company and not the Cucamonga Vineyard Company or the Cucamonga Land and Irrigation Company.

Mr. McKinley: I have always insisted that that is a ques-

Q. You said that there were [illegible] along the right-of-way? [illegible]

A. Yes, sir.

Q. But the general particulars you don't remember?

A. No, sir.

Q. You are the same [illegible] who was one of the first directors of the [illegible] Water Company?

A. Yes, sir.

Q. Your [illegible], could you identify [illegible] of any pipe line between Chattanooga [illegible]?

A. Well from the [illegible] from the [illegible] as I passed along that they were laying a large pipe up there, I didn't go up to see it.

Mr. [illegible]: [illegible] testimony is offered as affecting the [illegible] Water Company?

Mr. [illegible]: Yes, sir.

Mr. [illegible]: [illegible] Company?

Mr. [illegible]: In so far as the general knowledge [illegible] whatever.

Mr. [illegible]: I don't think the testimony is competent against the Chattanooga Companies.

Mr. [illegible]: I do not understand that there [illegible] limitation. I understood that you were not offering any testimony [illegible] I have understood [illegible] testimony was offered as affecting the [illegible] Water Company and not the Chattanooga [illegible] Company or the Chattanooga Land and [illegible] Company.

Mr. [illegible]: I have always insisted that that is a part-

tion of effect.

Mr. Britt: No, I didn't object. I had understood that the testimony was not offered to affect the other plaintiffs here whom I represent. If it is--

Mr. McKinley: I will say that this is not; considering some testimony that was put in this morning, I don't care whether it is or not. But this witness' testimony is not offered in any way as affecting your plaintiffs.

Mr. Britt: My impression is that there was a ruling of the Court some days ago on this precise matter, and it was then ruled by the Court that the testimony was not competent as against the two Cucamonga Companies.

The Court: I don't remember such a ruling. I remember a controversy came up and I was inclined to sustain the objection, and Judge McKinley suggested that he was offering it responsive to the issues raised by other parties here, and on that theory I overruled the objection.

Mr. Britt: That is a more accurate statement. But the Court did not rule, merely because there was a statement of counsel for defendants--

The Court: If it is necessary to make the statement, I think I ought to make it right now. When it comes to the determination of the case, if I find any evidence I do not propose to find out who offered it or against whom it was offered. I propose to consider it for what it is worth, for any purpose in the case. I think there are troubles enough for anybody who attempts to decide the case without attempting to find out who offered the evidence and for what purpose it might be considered.

Mr. Britt: But I suppose that the Court would hardly consider when the case is submitted that testimony here about the information which Mr. Hall, for example, who was a predecessor in interest of the Old Settlers Water Company-- what information he had-- would affect another party to the case.

The Court: That would go to the effect of it rather than its legal status. If Mr. Hall was in a position to charge you with notice, I don't see any reason why it should not be good against your client.

Mr. Britt: Assuredly; but it would have to be shown that he was in such a position.

The Court: That is what I say. It goes to the effect of it.

Mr. Britt: There was an understanding reached in the way your Honor discussed on the objection made to this line of testimony, on the statement by Judge McKinley that it was not for any purpose but against the Old Settlers Water Company. If there is any question about that--

Mr. McKinley: You will remember that I suggested once that I was reaching out for your country.

Mr. Britt: Your language is picturesque, but I do not recall the phrase.

Mr. Curtis: Q. Are you acquainted with the Sunset well, situated in Cucamonga?

A. I am acquainted with the history of that somewhat.

Q. The wells of the Sunset Water Company?

A. Yes, sir.

Q. Do you remember when they were being put down?

A Yes, sir.

Q You knew of them at that time?

A I did.

Q Did you ever visit the wells where they were being dug?

A When the last one was dug I was there once or twice, but the first one I don't think I was there. I don't remember. But I know where it was and I passed in sight of it and knew what was going on.

Q You knew what they were doing?

A Yes, sir.

Q And you knew their intention was to bore for water?

A Yes, sir.

Q And if they secured water to conduct it from the well on to property of the stockholders of the Sunset Water Company?

A Yes, sir.

Q Did you see anything of their pipe line at the time it was being constructed and laid?

A Yes, sir; I saw them laying the pipe as I passed on the road.

Q It passed along near the road?

A Yes, sir.

Q Does it pass near your property?

A Nearly a half a mile.

Mr. Conner: Q Do you know of the Arroyosa Water Company's well?

A Yes, sir; I know something of it.

Q Did you know of it about the time they were digging it?

A Well, yes; I think about May or June in 1901 that I

was up to the well one day when they were starting to pump. They had the well already made.

Q You know that they pumped water there?

A Yes, sir.

Q And that that was the purpose of digging the well, to secure water to irrigate the land of the stockholders of the company?

A Yes, sir.

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JOHN MADDOCK.

JOHN MADDOCK, recalled by defendant Sunset Water Company, testified as follows:

MR CURTIS: Q You are acquainted with the Sunset Water Company's wells situated in Cucamonga?

A Yes, sir.

Q Were you acquainted with them at the time they were being dug ?

A Well, I saw the digging them .

Q Were you at the wells at the time they were digging them?

A No, sir.

Q But you passed near them at the time they were being dug?

A Yes, sir.

Q Did you ever see their pipe line while it was being laid from the wells down to the lands of the stockholders of the Sunset Water Company?

A Yes, sir.

Q And you knew what the purpose of the pipe line was?

A Yes, sir.

Q And the purpose of the well?

A Yes, sir.

Q And that that purpose was for the purpose of developing water from the wells and conducting it from the wells to the property of the Sunset Water Company's stockholders?

A Yes, sir.

Mr. Conner: Q Do you know of the Hermosa Water Company's wells?

A Yes, sir.

Q Do you know when they began work on it?

A No, sir; I don't remember the date.

Q About the time? Did you know they were sinking a well?

A Yes, sir.

Q And the purpose of it?

A Yes, sir.

Q To secure water to irrigate the lands of the stockholders?

A Yes, sir.

Q Did you know of their pumping it at any time?

A Yes, sir.

Q Do you know how much?

A No; I never was at that. I saw them pumping.

Mr. McKinley. Have you the books that I called for?

Mr. Stevens: I didn't think anything about them when I got home Saturday. Mr. Britt telephoned me about it last evening and I took the matter up this morning, but I was un-

able to secure the books. Some of them-- the Land and Irrigation Company's books are in the possession of Mr. Childs. Probably the others are in the possession of Mr. Hyman at the bank. I arranged with Mr. O'Melveny to get possession of them and ship them down here.

Mr. McKinley: I want to call your attention particularly to the fact, inasmuch as you were not here this morning, that I asked specifically, although it is covered by the other demands--

Mr. Stevens: The memorandum I left with Mr. O'Melveny refers to general reports. If there are any letters we expect to have them.

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L. F. FULLER.

L. F. Fuller, a witness produced by defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

Mr. McKinley: Q. Where do you reside?

A. San Antonio Heights.

Q. How long have you resided there and in Ontario?

A. 22 years.

Q. Have you resided at the same place all the time?

A. I have been in the colony all the time.

Q. Are you connected with the San Antonio Water Company?

A. I was assistant zanjero.

Q. How long have you occupied that position?

A. 20 yearsx.

Q. State whether you have charge of a particular portion of

the work?

A. My district runs from the mountains to Tenth Street.

Q. Who has in recent years had charge of the other portion?

A. When I first began work Mr. S. T. Bradford and Mr. Dyer next, George Graves and Mr. Dyer came in again the second term, and Mr. McGill (I don't remember his initials) has charge at the present time.

Q. Now the district covered by you and the other district which was covered by Mr. Dyer cover all the lands irrigated by stock of the San Antonio Water Company?

A. Yes, sir.

Q. Have you had anything to do with the diversion of storm waters?

A. Yes, sir; for the past five years.

Q. State fully what you have done in that respect. I mean on behalf of the San Antonio Water Company.

A. In the Cucamonga Canyon?

Q. Yes; both canyons, but acting in your capacity on behalf of the San Antonio Water Company.

A. I have superintendence of the spreading of the water each winter for the past five years--

The Court: In both canyons?

A. No, sir; just Cucamonga Canyon.

Mr. McKinley: Q. What work has been done under your direction? Describe it as fully as you can.

Mr. Britt: We object as having occurred since the beginning of this action, and the evidence is immaterial and irrelevant.

The Court: Objection overruled. Plaintiffs except.

A. In time of high water we had men up to control the wat-

ers and spread it over the canyon in such a way as to keep all of it possible above Nineteenth Street.

Q How much work of that kind was done under your supervision each season?

A According to the storm water, all the way from two to dix men. Sometimes two or three weeks at a time, and sometimes longer. As the water would lower down, two men had to go over it every day and make the dams, and, as the water fell, changing the dams and keeping spreading it all the time.

Q During how many seasons has that occurred?

A For the past five seasons that I have had charge of that.

Q And during what portion of the rainy season?

A Any time that we had rain enough for the water to flow down the canyon, from November till April.

Q Do you know anything about the diversion of water from San Antonio Canyon?

A Yes; all that goes through our pipe lines in the winter season is turned out at Nineteenth Street and runs towards the southeast direction ,-- some five or six hundred inches.

Q How is it carried?

A There are irrigating lines from Nineteenth Street, seven or eight different lines, up to that point, and at the present time there is a 30-inch pipe laid through there for a ways, and then they have an open ditch, so that the water goes southeasterly towards the Sixteenth Street wells.

Q How long has that been in that condition?

A For the past ten years or more, that it has been going

in that direction, all the way from November to the first of May. They generally begin the irrigation regularly about the first of May.

Q During the period that you have been assistant zanjero-- You have been distributing the water ~~or spreading it~~ yourself in that district?

A Yes, sir.

Q I mean the irrigating water.

A Yes, sir; continually.

Q What have been the sizes of the heads of water diaributed by you during the years beginning with '98, referring to the different seasons as far as you can?

A Beginning with '98?

Q Yes.

Mr. Britt: Distributed where?

Mr. McKinley: To the stockholders of the San Antonio Water Company, within the district of which he has charge.

Mr. Haskell: We object to that as irrelevant and incompetent and not the best evidence. It has been shown here by records the amount of water that the company has delivered, -- that there are such records,-- and those records ought to be produced.

The Court: That may be, but I don't think your objection is good for that reason. The witness may know exactly what was turned out. It need not necessarily be recorded.

Mr. McKinley: As a matter of fact, we haven't got records showing the head as I have been informed.

Mr. Britt: Are there any records showing the quantity of water delivered to each stockholder from season to season?

Mr. McKinley: You haven't records, Mr. Fuller, showing the amounts delivered, have you?

A. I have no records with me.

Q. Have you anywhere?

A. I can't say that I have, exactly. I remember very well from memory about what we delivered.

Q. Are there any records? I don't want to take your memory if you have records.

A. I don't think I have the records showing the exact amount.

Q. Did you make records? Has anybody got them?

A. I never made any record, more than we went under instructions according to the water we had during those seasons.

Q. But you don't preserve any card showing the size of the heads you could deliver?

A. No, sir.

Mr. Britt: Q. May I inquire did you not keep a zanjero's book showing the quantity of water that you delivered to the various stockholders from day to day?

A. Of course, I kept books the different seasons, but I haven't any of them now.

Q. You turned them in to the company?

A. No, sir.

Q. What did you do with them?

A. I probably mislaid them. I don't know just what became of them. The company knew that I was going according to their directions in giving the amount ordered to each stockholder.

The Court: What was the book you kept? Was one kept by

order of the company?

A No, sir; it was a matter of convenience for my own use.

Q In what way was it convenient?

A I kept a book with each stockholder's name in my district, and I--

Q Tell us how the water was delivered? How was the system constructed and what did a head mean?

A A head meant-- each man owned so many inches of water.

Q We don't care for that. How did you give him the water?

A We measured it over weirs.

Q So many inches?

A Yes, sir.

Q You had a schedule by which you went?

A Yes, sir.

Q And this book was the book in which you were keeping the measurements?

A Yes; the name of the party and the amount of shares that he owned.

Q And the number of inches that you should let go over the weir for a length of time?

A No, sir; I didn't keep a record of that.

Q You have none of those books now?

A I have nearly all of my books that I kept with the names on, but not a record of the number of inches.

Q Did you make any minute of the quantity of water which you delivered to each stockholder?

A No, sir.

The Court: I find it the hardest thing in the world to make

zanjeros understand that a head of water is not the same the world over. They think we understand at once when they begin talking about a head. I would like to find out what a head was under the system of the San Antonio Water Company.

A I will try to explain it. Land that owned 10 shares of water, we would give him 30, 35 or 40 inches for a head according to the supply we had for the colony at that time-- in the different seasons. Some seasons 30 inches, and some 35, and in the fore part of the season we would give 40 inches . We would call 10 ~~inches~~ a head of water, and it varied from 30 to 40 or 45 inches, according to the time of the year. I would like to correct that: instead of 10 inches I should say 10 shares.

Mr. McKinley: Do you know how the company determined what amount of water each party was entitled to?

A Yes, sir; I think so. They determined it by-- The zanjeros had it under control themselves mostly. They knew how much water they had each month and measured it and gave the heads of water according to the number of inches they had-- the total inches.

The Court: Q Where did they do this measuring?

A It was measured, in the first place, at the head of the whole system.

Q Up in the canyon?

A Yes, sir; at the mouth of the canyon where we had measuring boxes, and I knew just exactly how many inches we had over a large weir.

Q You had some weirs over which all the water passed?

A Yes, sir.

employers understand that a load of water is not the same thing as a gallon.

Q. Do you mean to suggest to me that they are talking about a load?

A. I would like to find out what a load was under the system of the Interstate Commerce Commission.

Q. I will try to make it. Let us say that instead of water, we could give him 50, 60 or 70 inches for a load, apparently to use simply as bait for employees on that line in the different sections. Some weeks 50 inches, and some 60, and in the case part of the season we would give 70 inches. We would call 50 inches a load of water, and it varied from 50 to 60 or 70 inches, according to the time of the year. I would like to convert that inches at 10 inches I should say 10 miles.

Mr. Whitney: Do you know why the company introduced that amount of water such gently was doubtful?

A. Yes, sir; I think so. They introduced it upon the presumption it would increase efficiency. They have the same water; they had such water not measured in my case the basis of water according to the measured inches they have the inch basis.

The Court: Does it log or this measure?

A. It was measured in the trunk pipe, at the head of the water system.

Q. Go on in the report.

A. Yes, sir; at the head of the pipe where the water enters here, and I have gone carefully into that figure to find out a large unit.

Q. You had some water over which all the water passed?

A. Yes, sir.

Q How often was that measured?

A Each month.

Q And these calculations you speak of were known as monthly measurements?

A Yes, sir.

Q So it was at best an approximation? You didn't intend to be exactly accurate from day to day?

A No, sir. It would be measured from day to day to each stockholder.

Q I understand that you took your monthly measurement for the basis and you tried to make daily distributions on that assumption, but you wouldn't know what the basis was except as from month to month?

A When there was any variation in the gravity water we started to pump.

Q What do you mean by gravity water?

A Running down in the creek-- the San Antonio Creek water.

Q What other kind of water did you have?

A We had wells that we pumped water from.

Q You used those wells as a supplementary system? You depended on the gravity water primarily?

A Yes, sir.

Q If you had enough of that you didn't use the other?

A That is it.

Mr. McKinley: What I expect to show about this distribution-- not by this witness but other witnesses-- I don't expect to ask him for it at this time,-- but what I expect to show is that the amount of water which they had from day to day was determined by these measurements. Then it was divided

up by the number of shares of stock and the head determined,-- by the number of shares of stock,-- for the whole month.

Mr. Britt: The only object I had in objecting was in the hope that there was a system of records which would show the quantity of water distributed from year to year and the sources from which it was derived. I do not care about interposing and will not interpose knowingly a mere captious objection. But I thought we would get at the quantity of water these two companies have handled from year to year, commencing within the memory of men now living, and which would enable us to ascertain, further, the sources from which the supplies were obtained,-- so much from canyon, so much from the 16th Street well and so much from the Ladie tunnel,-- all of which matters, I believe, would illuminate the case.

Mr. McKinley: A great deal has been shown by measurements and we will show more hereafter.

The Court: Q. Under the rules of the company did you make reports to the down town office of the water which you supplied to the different stockholders?

A. Yes, sir.

Q. How were the reports made?

A. Verbal.

Mr. Haskell: Q. At the head of your ditch or near the head of your ditch didn't you have a measuring weir?

A. Yes, sir.

Q. And at that measuring weir you had a self registering weir, did you not?

A. No, sir.

Q You have one there now, don't you?

A No, sir. You mean the canyon water or the creek water?

Q Yes, sir.

A No, sir; I don't think there is any sel-registering weir.

Q Haven't you ever kept any weir to measure the total quantity of water diverted?

A We had a self-registering weir at the mouth of the San Antonio tunnel.

Q You have that weir at the mouth of the San Antonio tunnel?

A Yes.

Q That takes what proportion of your entire amount of water from the creek?

A No, sir; the San Antonio tunnel has nothing to do with the creek water.

Q You have a self-registering weir there?

A There has been one there. It is not there at the present time.

Q And what did you do with the records from that weir?

A The zanjero always attended to that. I didn't have anything to do with it. I am assistant zanjero.

Q And does all the water of the San Antonio Creek go through the tunnel?

A No, sir; none of it goes through the tunnel.

Q Did you measure the water coming from the San Antonio Creek at any point?

A Yes, sir.

Q Where are those measurements?

A At the head of our pipe system, before any water is diverted, about a mile this side of the canyon.

Q Is that a self-registering weir?

A No, sir.

Q Who keeps that record?

A The zanjero and myself.

Q What became of the records?

A The engineer has the records of that water. You can find out that information from him.

Q This water coming from the tunnel, which was measured, and the water coming from the creek, is the water which you delivered?

A Yes, sir.

Q And you delivered it all?

A Yes, sir.

Mr. Haskell. We object to the further examination of this witness as to what water he has delivered because it is shown that there is a record.

The Court: Objection overruled. Plaintiffs except.

Mr. McKinley: Q You stated that you delivered it all. Do you mean that you took it all in your district?

A No, sir; I mean that the company delivered it all-- the two of us delivered it all.

Q Recurring to the question, will you state what was the size of the head you delivered from '98 on, approximately?

A '98 and '99, a portion of the time, in the dry season, we ran 20 inches half time. That is, 12 hours instead of 24.

Q About what amount of water were the orchards receiving, according to these figures, per acre, in continuous flow?

The Court: That is, if you know. If you don't know, you may say so.

A I would like to study it.

Mr. McKinley: I withdrew the question.

Q How often were those run?

A In those years it ran all the way from 30 to 45 days long in getting around to each stockholder in the dry season.

Q You are referring to the years '98 and '99. In the subsequent years what has it been?

A Since '99?

Q Yes.

A 30 and 35 inches in the fore part of the season. Sometimes we would give 40 and 45 inches to each stockholder for each 10 shares.

Q Full time?

A Yes, sir.

Q How many days apart?

A 30 days. During the latter part of the season, in August and September, 30 inches and 35, some seasons.

Q During this period of your residence in Ontario you have observed and become acquainted with the raising of citrus fruits-- orchards, and the amount of water necessary for the proper cultivation and irrigation of orchards, have you?

A Yes, sir; I think so.

Q What in your opinion is the amount of water necessary for the proper irrigation of such orchards, giving the different amounts, as to the varying ages as well as you can,

and taking into consideration the character of the soil in the district of which you are zanjero? I am asking this in continuous flow per acre.

A Our oldest orchards that we have in my district, is 3-1/3 acres, or 3 inches to 10 acres.

Q How old are those oldest orchards?

A 25 or 26 years old and possibly a few are 27.

Q Proceed.

A Orchards from 10 to 15 years old, an inch to 5 acres; and the young groves from 1 years old to 5 or 6 before they get to bearing much, an inch to 10 acres is sufficient., for the young growth.

Q What is the acreage of orchards and citrus fruits-- oranges and lemons-- in your district?

A 1745 acres in my district.

Q What can you say as to about the division as to ages of those orchards?

A I have a note of it here.

Q You made figures in regard to it?

A The number of acres planted up to '94--

The Court: Have you recently made this memorandum?

A Yes, sir.

Q You have gone over it carefully?

A I have gone over the acreage in my books and I know every pipe line in the colony. The groves planted up to '94, 1080 acres. The groves planted from '94 to 1900, 370 acres. Groves planted from 1900 to the present time, 295 acres.

Q Now referring to the orchards planted before '94, about

what number of acres of those older orchards to which you refer? Can you divide it up?

A I judge about one-third of those 25 years old. The balance were planted at different periods up to '94.

CROSS EXAMINATION.

Mr. Britt: Q When did you begin to be zanjero of the San Antonio Water Company, or assistant zanjero?

A 20 years ago the first of next May.

Q Have you personally made observations of the times when these orchards were planted, or are you stating what was told to you by other people?

A No, sir; personally; my observation of the groves that were planted when I began work and what has been planted since.

Q You say that in '94 there had been something over 1000 acres planted in your district?

A Yes, sir.

Q Did you watch the planting of every one of those orchards?

A I had to furnish the water for every one that was planted.

Q Did you keep a record of the day when an orchard was planted?

A I didn't keep a record of the exact days.

Q When did you make this computation of the age of the trees?

A I made this from-- I took a copy from my books-- I made it yesterday.

Q Let me see your book from which you made your copy.

A I will explain so you will understand it.

Q I am not very finicky, but I want to know what it means.

A I have a system of my own. I have all my pipe lines named so that I know the pipe line run-- We have one main pipe line on Twenty-fourth Street and a pipe line to every 10 acres in the colony.

Q In your book this is the east line?

A Yes, sir.

Q What is that name?

A Swain.

Q What arethese figures to the right?

A That is the date that he gets his water.

Q When were those entries made in that book?

A I make a new book every season because the groves change hands and the same man probably wouldn't own the grove two years in succession.

Q There isn't anything in this book which you are exhibiting to me which shows when the Swain orchard was planted?

A I don't know the date it was planted, but it was planted when I came to the colony.

Q You say that that was 20 years ago?

A I have been at work for the company 22 years.

Q Then it would be in 1886 that you came there?

A Yes, sir.

Q You say Mr. Swain's orchard was planted at that time? How much of it was?

A 7 acres in the older part of it and 3 acres later on.

Q When were the 3 acres planted?

A I can't tell you exactly when. It was planted away before '94.

Q How much has Mr. Swain altogether?

A 10 acres

Q Let us take somebody on the next page.

A McNeil.

Q He has 20 shares?

A Yes, sir.

Q What do these figures mean?

A That he gets the water on the 5th day of the month.

Q McNeil gets it on the 5th day of the month?

A The 5th day of each month.

Q When was McNeil's orchard planted?

A Well, I have to answer the same as before. Prior to '94.

Q You remember those things?

A Yes.

Q Then you state that between 1894 and 1900 there were planted some 400 acres, weren't there?

A 370 acres

Q Where is your record of those plantations. I

A I made a record the same way. By running down my list here as I have got it here-- my pipe lines-- I have records on each pipe line.

Q How many acres are there in all?

A 2525 acres.

Q How many groves or different individual owners? Give it to us approximately. I am going over this quite rapidly.

A I don't think I can give that very accurately.

Q Can you tell with 20 or 30 or 50?

A I might make a guess. I could give it at home.

Q You have a record at home?

A Yes, sir.

Q Do you keep any note or record when a new grove is planted?

A No, sir.

Q That part of the district irrigated by the San Antonio Water Company and from its pipe lines is included within your field of labor-- your 1745 acres?

A The north section of the colony, as far as 10th Street. Beginning at the foot hills and running to 10th Street.

Q Beginnint at the extreme north side and running thence south to 10th Street?

A Yes, sir; everything to,10th Street.

Q That has 1745 acres of orchard?

A Yes, sir.

Q Do you distribute up there for domestic purposes also?

A Yes.

Q The water which you distribute above 10th Street all comes out of San Antonio Canyon?

A No, sir.

Q From what other quarter?

A From the 10th Street wells, the Frankish and Stam tunnel and the San Antonio tunnel.

Q Does that water come down there or come over to the Ontario Colony above 10th Street?

A Yes, sir.

Q Does 19th Street run directly east from the Ontario

colony to the Sourwine wells?

A Yes, sir.

Q Which way do they number? Do they number from north to south? Where is street number 1? Next to the foot hills?

A No, sir; below. It starts in Ontario. The numbers go north.

Q They number north?

A Yes, sir. 24th street is about the head of the system.

Q What is the last numbered street toward the mountains?

A 26th, I think. My impression is it is 20th street.

Q And this covers everything north of 10th street?

A Yes, sir.

Q Have you anyone to assist you in that territory ?

A Not in the distributing of water.

Q You are the assistant zanjero? Who is your principal?

A Mr. McGill at the present time.

Q Do you do any of the distributing for the Ontario Power Company?

A The Ontario Power Company don't distribute only for domestic use.

Q Do you do any of it?

A Yes, sir.

Q Where?

A In the same district.

Q How do you keep a record or minute of the quantity of water distributed for domestic purposes?

A I make reports of all the users and they take their runs through meters, or some have flat rates. But I don't have anything to do with reading meters.

Q Is all the water of your district furnished for domestic purposes supplied by the Ontario Power Company?

A Yes, sir.

Q How do you keep that water separate from what you supply for irrigation?

A I don't keep it separate. That is kept separate by other parties.

The Court: Do you mean it runs through the same pipe?

A Yes, sir.

Mr. Pritt: Q What is supplied for irrigation runs through the same pipes as that which is supplied for domestic purposes?

A Yes, sir.

Q Does it all run through meters? Both for irrigation and domestic waters?

A No, sir.

Q You measure over a weir to each consumer for irrigation?

A Yes, sir.

Q And you measure through a meter for domestic purposes?

A Some of them have meters and some of them have flat rates, where there isn't very much pressure. There is places where they don't use meters at all.

Q How do you determine the quantity which they receive under those flat rates?

A I don't determine that.

Q Do these customers pay for the domestic waters?

A Yes, sir.

Q They don't pay you? You don't collect?

A No, sir.

Q. Is all the money of your district included in the Budget applied by the Board of Education?

A. Yes, sir.

Q. Now do you know that Senator Bradley's bill that you supply the information

A. I don't know it exactly. This is just supposed to be a place-

The Senator: Do you mean it came through the same plant?

A. Yes, sir.

Mr. Smith: What is supplied for Bridgeton? Bridgeton the same plant as this--this is supplied for Atlantic City passed?

A. Yes, sir.

Q. Does it all run through current bill for Bridgeton as a domestic matter?

A. No, sir.

Q. The Bridgeton area is only it only includes the territory?

A. Yes, sir.

Q. Did you consider giving a bill for domestic purposes?

A. Some of that has been taken out from of the bill for Atlantic, where there bill very most problems. There is plenty there, but don't use it at all.

Q. Have you determine the quantity which may remain unfurnished?

A. I don't understand.

Q. Do there remain any for the domestic matter?

A. Yes, sir.

Q. Then you don't understand?

A. No, sir.

Q As regards the distribution for domestic purposes, what do you have to do?

A All I have to do is to see that each man has what we call a sand box at the corner of hisplace and has his domestic pipe attached to that box, and I see that the water is in there for him.

Q And they receive their domestic water generally in pipes?

A Into pressure pipes-- iron pipes.

Q And they receive their irrigation water into pipes, flumes and ditches?

A They receive it generally in concrete head ditches out of our cement pipe lines. We turn it out of our pipe lines into what we call head ditches.

Q It is the same kind of water, I suppose, as is delivered for domestic water?

A Yes, sir.

Q From the same source of supply?

A Yes, sir.

Q How can the quantity be determined delivered for irrigation and the quantity delivered for domestic purposes for each consumer in those cases where there are flat rates? Is it known at all?

A Yes, sir; it is known to us. We have a main pipe line and the water is all measured out into distributing lines, and I allow a little extra water in each line for domestic use besides the irrigating head.

Q How do you determine how much that little should be?

A Just from the usage. I know just howmuch it takes for

each pipe line. I know how many families are living on each pipe line and I determine that way.

Q. Do you divide the water to each pipe line for that purpose?

A. Yes.

Q. What means have you of knowing the quantity which you apportion to a pipe line for domestic use as distinguished from that part of it which is allowed for irrigation? I am trying to get at the manner in which the San Antonio Water Company keeps its water in these pipes that is distributed to these people distinct from that of the Ontario Power Company.

A. They don't keep it distinct. The water all runs in the same pipe.

Q. Yes, I know. But doesn't each company know or does each company know anything about the quantity of water that it has distributed to Mr. Swain? He gets some domestic water, doesn't he?

A. Mr. Swain don't, because there is no building on his place.

Q. Well, take McNeil.

A. McNeil don't; but I can name plenty that do.

Q. Name somebody that does.

A. Mr. Nelson gets domestic water.

Q. How does he know the water that he gets from the San Antonio Water Company as distinguished from that which he owes the Ontario Power Company for?

A. If Mr. Nelson owns 10 shares it is measured out to him at his head ditch right through the same box, if he has

main pipe line. A deteriorating condition has lately an main pipe line and a corrosion last say.

Q. Is you standing water in main pipe line for prolongpeat

A. Yes.

Q. Does such water pre effecting the quality water you supplying to water line Tyr consists the so Chlorination Does that part of it seems is added for treatment

Lastly my question is which you has been Water company begin the enter in these pages that Exhibit Commerce. In these period statement for the Tabaria power Company.

A. They don't know in distinct, the water is from in the main pipe.

Q. Yes, I mean for Commerce and company have to this water supplying which indicating of water. This is the distribution in Tr. water Co pipe from Jordan water, Jordan's.

A. No, Jordan don't, because there is no building on in place.

Q. Well, take again.

A. Jordan don't; but I see main pipe line.

Q. Does supplying this area.

A. Yes, Jordan pipe Jordan water.

Q. The area is have the water not is pipe line on the Jordan Water Company as distinguishes type water stations over the Tabaria Power Company Ltd?

A. No Tr. Nature good in water is insufficient and is not at the head office right Jordan, you know here, it is the

a meter, and the water is read and for the number of cubic feet the bill is sent to him.

Q All in one bill?

A No, sir; there is no bill for the irrigation water. He owns that water.

Q He gets that on his stock?

A Yes; but the domestic water, there is a bill sent from the office to him, so much for domestic water.

Q How can anybody tell the amount that has been distributed to him-- the number of cubic feet of domestic water?

A By reading his meters

Q and if he hasn't any meter?

A Then he pays a dollar a month; if the pressure isn't very large and they don't consider it worth putting on a meter, They charge him a flat rate.

Q Do you get any separate or independent pay or wages for the care you give to that domestic water from the Ontario Power Company?

A No, sir.

Q What company pays your salary?

A The San Antonio Water Company.

Q And besides looking out for the irrigation water you also look out for this domestic water delivered by the Ontario Power Company?

A Yes, sir.

Q And the San Antonio Company pays you for both services?

A Yes, sir. The domestic water is only charged for during the irrigation season.

Q When you don't irrigate there is no charge for domest-

ic water?

A No, sir; they are supposed to use it out of their stock then if they don't use it for any other purpose.

Q Now I understood you to say that you had something to do with spreading out water from the Cucamonga Creek in times of freshet.

A Yes, sir.

Q And that you have been doing work of that sort for ten years?

A Yes, sir.

Q Did you go on the ground with the men who were at work?

A Yes, sir.

Q There was a gentleman here the other day who had some sort of a record of the number of days and the number of men who were employed. What was his name?

A Mr. Manley.

Q Did you report to him the number of men that were on that job?

A Mr. Manley up to the last two years has always sent me the men. He is superintendent of construction work and he has men working for him, and at the time of freshet he sends me the men and I superintend the work.

Q The last two years?

A He has always done that; but the last two years I have hired ~~xxx~~ some men to look after the same thing.

Q You were aiming to keep the water above 19th Street?

A Yes, sir.

Q When you went up there you went up some times with one man and sometimes more?

A Hardly ever less than two men and myself, and sometimes six.

Q Do you go when you conclude that it is time to go or do you wait for instructions from Mr. Manley?

A I go whenever there is a freshet, without any instructions. Whenever there is much water coming down the stream.

Q When do you determine that?

A Judging from the rain fall.

Q You go up with two or three or four men and how high up the stream do you go?

A I work from the mouth of it down to 19th street.

Q You take the water out on the west side of it?

A We spread it anywheres where we can turn the water out so that it will not all come down one stream. Any place we can turn any water out at all, even if it runs a ways and then comes back into the same stream. Anything to keep it above 19th street as much as possible.

Q Have you turned it to thewest or have you turned it to the east of the stream?

A The main channel is sometimes more to the east, and of course we have turned it to the west, some portion of the wash, till it comes down to where it spreads in every direction. Further down the wash it widens out and we apportion it in all the different places that we can in order to keep it from coming below 19th street.

Q You put in stone to make a sort of a dam?

A Yes, sir; after the rain is over the water is falling every day, and we have to go back next day and fix it up so as to keep diverting it every day, sometimes for weeks

A. Mostly over land. Yes, the sun and moon, but generally not.

Q. If you go west you usually find it is time to go to the east. Is the earth flat or round?

A. Up mountains, down in a crevasse, sliding on the glacier, falling, falling down, to land with water rushing from the glacier. Does the earth bounce back?

A. Judging from the rain, full.

Q. You go up with two or three or four sun and low clouds up into orange or red.

A. Literally from the depths of ignorance to life itself.

Q. The land is moving and so the land also is 111?

A. In general it seems there is one land, the water and so land is not all one from one reason, by where by one from the water one is not, even if it rose a mere and two seems land like the rest. Anyway, it has to make life, which first appears as mud or sensitive.

Q. Does you turned it to lizard or lake, you turned it to the mud of the element.

Q. The sun moved a million miles to the east, and it rained or land turned it to the west. Now problem or the sun. Will it move from the west? It rained in every direction. Further down the road it stopped and put in superline it is all the diffused phase. Does we see the other in-step it from reading below this lizard.

Q. You go to sleep in such a week of dead.

A. Yes, very alone the rain is over the water is falling entirely, but in lake is full head, the air is the air is the air is the. Listening it wind, the, sunshine for rain

time at a time, according to how much water we have.

A And those dams or obstructions wash out every day, do they?

A No, sir; as the water lowers in the main stream we have to build different dams to throw the water out.

Q Did any engineer ever make any diagram of the stream up there or the places where you were to put in your obstructions? Did you have anything to go by in the nature of a chart?

A No, sir; I never had any chart, and I couldn't say whether there had ever been any made or not. Mr. Hardey had charge of the work before I took it over. Possibly there is a diagram by the engineer.

Q But you never saw it?

A No, sir.

Q How many different places did you expect, whenever there was a freshet in the creek, to put in those obstructions?

A It would be hard to say; any place that we could possibly turn any water out between the mouth of the canyon and 19th Street we put in those obstructions. In different seasons it would be in different places.

Q There were no definiteplaces where you could return day after day and put in your obstructions?

A Some seasons there would be. They would all wash out. This season the dams all washed out.

Q Youreffort was to take the water mostly to the west of the creek?

A No, sir; not particularly. It was to throw it west--that is, after we got down the wash a way. There it start-

ed out we divided it up the best we could to prevent any of it going below 19th Street.

Q. That San Antonio surplus of water or quantity which you brought over from the San Antonio Creek, commencing several years ago, you turned it in, as I understood you, at the 19th Street ditch in Ontario?

A. Yes, sir; Euclid Avenue and 19th Street.

Q. At the corner of Euclid Avenue and 19th Street?

A. Yes, sir.

Q. And when you first began to turn that water did you have a paved or cemented ditch or cobblestone ditch?

A. Yes, sir; we had a very large cobblestone ditch for a ways running east.

Q. Running along 19th Street?

A. Yes, sir.

Q. To the first wash?

A. Well, the ditch didn't extend quite to the first wash. There was an open dirt ditch that did extend out to that natural wash. The paved ditch didn't reach out to the natural wash. It ran in the stone ditch part of the way and then went into the dirt ditch.

Q. Did you hear the testimony of Mr. Manley? I believe he testified about that.

A. No, sir.

Q. That wash into which the water is discharged through that 19th street ditch is the westernmost wash of the Cucamonga Creek?

A. Yes, sir.

SUPERIOR COURT

Mr. Haskell: Q. I understood you to say that 10 shares constitutes a head of water.

A. Yes, sir.

Q. One share represents one acrex, doesn't it?

Mr. McKinley: Objected to as not crossexamination.

The Court: I am inclined to think it is cross examination. He went into the disposition of water according to shares.

Mr. McKinley: All right. I don't care.

A. In the original laying out of the colony it did, but it don't necessarily, now.

Q. That is, someowners have more than one share to the acre?

A. Yes, sir; a great many owners have two shares to the acre.

Q. How many shares are there in this company that actually receive water?

A. 6000.

Q. How many acres of land are receiving water at the rate of more than one share to the acre?

A. I can give you the number of acres planted.

Q. I wish you would do that.

The Court: You are speaking of the entire colony, or your portion of it?

A. I didn't know what he had reference to.

Mr. Haskell: Q. The entire Ontario colony is what I am asking for now. The entire number of shares of water stock represented by land and water being delivered in accordance therewith.

The Court: Q. You have figures for the entire colony?

Mr. [illegible]: [illegible]
[illegible] of water.

A Yes, sir.

Q [illegible]

Mr. [illegible]: [illegible]

The [illegible]: [illegible]

[illegible]

Mr. [illegible]: [illegible]

Q [illegible] and,

[illegible]

Q [illegible]

[illegible]

A [illegible]

[illegible]

Q [illegible]

[illegible]

A Well,

Q [illegible]

[illegible]

A I can give you the names of their products.

Q [illegible]

The [illegible]

[illegible]

A [illegible]

Mr. [illegible]: [illegible]

[illegible]

[illegible]

[illegible]

The [illegible]

A Yes, sir; 4007 acres planted.

Q And there are 6000 shares distributed on that amount of land?

A Yes, sir.

Q Now, you receive some water from the San Antonio Creek through a ditch, do you?

A Yes, sir.

Q And some water through the San Antonio tunnel?

A Yes, sir.

Q And that water is distributed on land both above the 16th Street pipe line and below it, isn't it?

A Yes, sir.

Q But none of the water from the 16th Street pipe line or the Radie tunnel is distributed on land above the 16th street pipe line?

A Above 14th Street.

Q Now, in your district you distribute water from the San Antonio Creek, from the San Antonio tunnel and from the 16th Street pipe line and from the Radie tunnel pipe line, do you not?

A No, sir.

Q What do you distribute water from?

A From all of those but the Radie tunnel.

Q As I understood you in your direct examination this water that comes through these various sources is a varying quantity according to the season of the year and the character of the year, whether wet or dry. Isn't not true?

A Yes, sir.

A. Yes, sir; that is correct.

Q. And there are 600 shares, distributed in this manner, is that?

A. Yes, sir.

Q. Mr. Pritchard, you went from the Bankers Trust Company to Lehman, is that?

A. Yes, sir.

Q. And came back through the Bankers Trust?

A. Yes, sir.

Q. And then went to Lehman on June 20th, where he joined Mr. Lehman and Mr. Lehman is, that's his?

A. Yes, sir.

Q. Shortly at the return from the 30th Street plant the matter began to be discussed in Lehman by Mr. Lehman and Mr. Lee?

A. I have that idea.

Q. Now, in your direct you indicated when from the conference room, from the Bankers Trust and from the Lehman plant you came to Lehman Brothers?

A. Yes, sir.

Q. That is the Lehman Brothers room?

A. Yes, sir, to come for the Lehman Brothers.

Q. Is it the history of the plant during approximately that period that would lead Mr. Lehman to arrive at a conclusion as to what is happening in the business of the plant and the observation of the plant, which is his, is it not that?

A. Yes, sir.

Q How then, in each month you have a new apportionment of water, have you not? According to shares?

A Not in each month.

Q How often?

A We generally run the same amount of water up till abot August and then apportion it.

Q Then the amount of water which you deliver for any given season is determined at the beginning of the irrigating season about to the month of August?

A Notparticularly. If the flow goes down before August of course we cut our heads of water down a little.

Q Who makes that cut? You as zanjero or the directors of the company?

A The directors of the company has that in charge and confers with us zanjeros.

Q And isn't that cut made by them upon a report of the amount of water flowing from these various sources that you have mentioned, given to them by you?

A Given to them by the engineer.

Q Is it not part of your duty to record the measurements of the water flowing from the San Antonio Creek?

A Certainly it is part of my duty.

Q And is it notpa t of your duty to record the measurements of water flowing from the San Antonio tunnel?

A Yes, sir; I think that is a duty.

Q And is it not part of your duty to record the measurements of water flowing from the 16th Street pipe line?

A I don't use very much of that water.

Q I am not asking you how much you use, but is it not a

part of your duty to record the measurement?

A. No, sir.

Q. But it is ~~of~~ with theother two?

A. Yes.

Q. How often do you take that record?

A. I took that measurement at least once a month and sometimes every day or so.

Q. Have you got the original book of entry in which you took that record?

A. No, sir.

Q. Did you take and record it in a book or on a slip of paper?

A. That is generally done by the zanjero.and myself. And he takes the record of it and I record it on a slip of paper.

Q. Have you got any of those slips of paper on which the record has been taken?

A. No, sir.

Q. What has become of them?

A. I don't know.

Q. What did you do with them?

A. I don't ~~m~~ suppose I have made any use ~~mx~~ for them and destroyed them, I suppose, or mislaid them.

Q. But you did make a report of those measurements to the directors of the company?

A. No, sir.

Q. You made it to the zanjero?

A. The zanjero and I do that and the engineer makes the reports of measurements.

Q During this irrigating season you say that you sometimes delivered 40 or 45 inches to every 10 shares of water?

A Yes, sir.

Q Is that the maximum amount of water that you delivered?

A Sometimes we delivered 50 inches in the early part of the season.

Q Is 50 inches of water the maximum amount of water that you delivered in the irrigating season?

A Yes, sir.

The Court: That is, a head, you mean?

A Yes, sir.

Mr. Haskell: Q Those heads are delivered once a month?

A Yes, sir.

Q Now are these surplus shares of stock over and above the total number of acres that you say are irrigated owned principally by the older orchards or the younger orchards if you know?

A The orchards has nothing to do with it. That is, the older orchards--

Q You know where you delivered the water.

Mr. McKinley : Let him finish his answer.

A Some individuals has owned water that had no use for it at all and has rented it to other parties up to the present time-- rented it to people that owned old groves.

Q You know where you delivered the water?

A Yes, sir; it is used by the older groves. I will answer it that way-- all this surplus.

Q Now, in the year 1907 during the irrigating season you

Q. Is it true that the Metropolitan Water Reclamation District discharges 60 or 65 million gallons of water?

A. Yes, sir.

Q. Is that the maximum amount of water that you discharge?

A. Maximum we discharge on average is the monthly peak of the month.

Q. Is it the intent of water reclamation district to deliver this to the Illinois waterway?

A. Yes, sir.

The Court: Just by a show, you mean?

A. Yes, sir.

MR. DANIELI: Other than the Illinois and a number?

A. Yes, sir.

Q. How are there surface discharges of treated sewage and the treated effluent of sewage that are not intended primarily by the other municipalities or industrial plants?

A. The overwhelmed the building is 40 cubic ft. That is, the other-industry--

Q. You have figures you distribute the water.

MR. DANIELI: Let the Plaintiff see them.

A. Approximately 1 million gallons per day. It is 1 million gallons per day -- 1 million people, that equal 500 gallons.

Q. You have every you to treated the method

A. Yes, sir; it is used by the other -- I will answer in that way -- all-time sample.

Q. MR. Is the year 1980 during the intervening years the

had a large surplus of water flowing from the San Antonio Canyon that you didn't use, did you not?

A Yes, sir.

Q And as late as the latter part of June that amount of water was at least 400 or 500 inches?

A I can't answer that question. I don't know how much.

Q You saw the water flowing?

A Yes; I saw it at different times.

Q And it was allowed to run out in the wash and was not diverted?

A That we didn't use.

Q That has occurred in a number of seasons, has it not?

A In very heavy rainfall and lotsof water in San Antinio Creek.

Q During that same period of time you were taking water from the 10th street wells?

A No, sir.

Q You were from the Ladie tunnel?

A We were not last year.

Q In 1907?

A I couldn't answer that. I haven't anything to do with the Ladie tunnel whatever. It is used entirely by the zanjero.

Q Have the older orchards or any of the orchards in the Ontario colony suffered for water during the last two years-- 1907 and 1908?

A Yes, sir.

Q Where?

A All over the colony last year.

Q In 1908?

A Yes, sir.

Q Did they in 1907?

A I can't say that they did in 1907. We had much heavier rainfall in the winter before 1907.

Q Wasn't the crop of oranges and fruit produced in 1908 the most profitable fruit crop that was ever raised in Ontario?

A I don't know.

Q Don't you know it was reported to be the largest in quantity--

Mr. McKinley: Objected to as calling for hearsay, and not cross examination.

The Court: It is not crossexamination.

Mr. Haskell: He has stated what he thinks is the necessary amount of water and he says that the trees suffered.. Now when they produce a large amount of fruit, it is proper cross examination--

The Court: Just as they say that when eggs are high the hens don't lay.

* * * * * * * * *

Q Weren't there more carloads of oranges shipped to the market and raised in Ontario and Ontario colony lands in 1908 than any other season?

A I couldn't answer that question exactly. I am not familiar with it.

Q You saw the fruit on the trees?

A We had a large crop; yes. A good crop.

Q And wasn't it larger than it was in 1907?

A I can't say. I never not ed any trees outside of my district.just above 10th street. I don't know what it was in the lower part of the district.

Q And as I understood you to say there are orange orchards 25 years of age that required 25 inches to 10 acres?

A No, sir.

Q What is it?

A About an inch to 3-1/3 acres.

Q Have you computed any of this acreage to see how much you have actually delivered on any of it?

A Yes, sir; I know how much I have delivered on each of the groves.

Q Have you got the record of it?

A I haven't got it in writing.

Q Have you got any memorandum of it?

A No; I haven't got any memorandum of it.

The Court: Q You mean that you compute it from your memory?

A Yes, sir.

Mr. Haskell. I don't care to ask his memory on that question because he has already stated the ~~dxxxx~~ total amount of acres, and I think that is better than to ask from memory what he delivered on any particular grove.

Mr. Britt: Q Is there anyone else besides the San Antonio Water Company distributing water for irrigation in the limits of the Ontario Colony?

A No, sir.

Q There are no other sources of water supply there than that of the San Antonio Water Company?

A In the Ontario colony? Oh yes. I was thinking of my district. There is nothing in my district.

Q Who else distributes water within the limits of the colony?

A I don't know whether they do now or not, but there was an Ontario Water Company at one time that distributed water there.

The Court: Q Irrigating water or domestic water?

A Irrigating water.

Mr. Britt: Does your district include Upland?

A No, sir; not all of it. 10th street runs about through the center of Uplands and my district runs to 10th Street. You had reference to irrigating water?

Q Yes; I was speaking of irrigating water. Is there any other concern distributing water for domestic purposes in your district?

A In the town of Uplands there is a domestic water-- The Citizens Land and Water Company, but it is all San Antonio Water Company stock. It is owned by the Citizens Land and Water Company.

Q And the Ontario Power Company? You don't consider that as a separate institution, I suppose? The Ontario Power Company is distributing water there?

A Yes, sir, as I said before. In one sense of the word I didn't consider it separate. It has the same stockholders. I didn't think of that part of it. I don't want to contradict myself on that. The Ontario Power Company is distributing water. I would like to correct that.

Q No, I understand. I believe I understand what you meant

A. In the Dakotas relatedly so you. I was thinking of my district. There is nothing in my district.

Q. Has other distributors water within the limits of the city?

A. I don't know whether they do same or not, but there is no Sioux Falls Energy so our line that distributed water.

The Court: Q. Irrigating water or domestic water?

A. Irrigating water.

Mr. Davis: Q. Does your district include Yankton?

A. No, sir; not all of it. The district does cover the county of Yankton and my district runs to Lake Andes.

Q. Has not Yankton a distributing water?

A. They do operate an irrigating water. We have my other service distributing water for domestic purposes in your district.

Q. In the case of Yankton there is a domestic water. The Sioux Falls Water Company, but it is in all one the main water Company state. It is owned by the Sioux Falls Water Company.

Q. Do the Dakota Power Company Yankton's monopoly then is a separate institution, I suppose the Dakota Power Company is distributing water plant?

A. Yes, sir, as I said before. In my mind at the moment I think question is separate. It has the same shareholders, I think. Some of shareholders of it. I don't know be mechanically equal on that. The Dakota Power Company is distributing water. I would like to correct that.

Q. Mr. Johnston: I believe understand what you mean

to say.

A It was irrigating water that I thought you meant. The Ontario Power Company don't distribute any irrigating water.

Q Has any objection been made to you from any quarter against the turning of that water of the San Antonio Creek through the 19th Street ditch and into the westernmost wash? Has anybody objected to that sort of work?

A No, sir.

Q No injunction has been served on you?

A No, sir.

Q That water goes through the pipe line?

A It goes through different pipe lines.

Q Of the San Antonio Water Company?

A Yes, sir. Up to that point. Up to Euclid and 19th Street.

Q And there it is turned out of the pipe into an open ditch?

A Yes, sir.

Mr. Haskell: Q These heads of water are delivered for a continuous run of 24 hours each?

A Yes, sir.

Q Do you know of any old orchard that has been receiving continuously for the last five years, say, or any number of years (that is, 25 years old) that has received and been delivered to it water represented by as much as 20 shares of stock for each 10 acres?

A Yes, sir.

Q How many of such orchards are there?

is any.

Q. Do you recognize this map?

A. Yes, sir.

Q. Is it a correct map of the Sunset Park Water Company's mains?

A. Yes, sir.

Q. Did you make it?

A. No, sir.

Q. Do you know who made it?

A. No, sir.

Q. Is it a correct map of the Sunset Park Water Company's mains?

A. Yes, sir.

Q. Do you know if it shows all the pipes that are in that district?

A. Yes, sir.

Mr. Hubbell: I offer these maps of water mains as evidence for a preliminary use of the Water Board.

A. Yes, sir.

Q. Do you know of any old engineer who has been recently employed for the Sunset Park Water, say, at any time for a year from 1[illegible], to your knowledge, and who has been employed in a similar capacity by a man who is dead or absent or blind for such a period?

A. Yes, sir.

Q. Name one.

A. [illegible]

A I can't tell from memory. There is a number of them. Some of them more than that. I know of orchards receiving 30 shares for 10 acres and have been for years. I can give you the names of some of the parties.

Q Whose orchards?

A C. F. Harwood, for one.

The Court: Q Is that lemons or or anges?

A Lemons.. I know one orange grove receiving 30 shares for fiveor six years. For the past five or six years, I say. I don't remember exactly the number of years.

Q On what kind of soil is that orchard planted?

A That is inclined to be a little heavy soil; a little adobe and part gravel in the ten acres.

Q Is that the largest amount of water that you know to be delivered on any 10 acres?

A 30 shares is the largest amount that I know of.

The Court: Q Can you say from your observation and experience whether the use of 30 shares on 10 acres on either one of those places is desirable or advantageous?

A Yes; on those very groves they make much more money out of them than any groves I know of.

Q Do you know on what particular theory that excess of water is used there over and above the average of the colony? Is it by reason of the age of the trees or the soil or what?

A It is by the age of the trees, principally.

Q But I understand there areother trees about the same age using about the same amount.

A Those that are only using 10 shares are not making

A. I don't tell jokes anymore. There is a number of jokes, one of which been told. I hold a drinking rankings 90 shows for 10 years and have been for years. I can give you the names of some of the parties.

Q. Shows organized?

A. Yes, organized, yes sir.

The Court: Is that limited to or at Angel?

A. Yes. I have one group reporting 26 shows for Flavor Ale years. For the past five or six years, I say. I don't remember exactly the number of years.

Q. You said that of well is this present placed?

A. That is included in by a little bump with a little shale and pure gravel in the top soil.

Q. Is this the largest amount of water that you have to be delivered on any 10 acres?

A. 30 shares is the largest amount that I have of.

The Court: Can you say from your observations and experience whether the use of 30 acres or 10 acres on either one of these places is desirable or advantageous?

A. They do have very severe; they make each other very out of them then not. Given I have of.

Q. Do you have an that particular having that one at water is used there ever and share the average of the amount? Is it by reason of the age of the trees or the soil or what?

A. It is my the age of the trees, principally.

Q. Just I understand they produce trees soon the age using about the same amount.

A. These that are only using 10 shares are no longer

very good crops. That is, not what they ought to be.

Q. You think they can use water representing more than 10 shares on most any 10 acres beneficially?

A. Yes, sir; I know one man in the colony that used 50 shares on 10 acres at one time.

Mr. Britt: Q. What sort of land? Gravelly, sandy or stony land, or clay?

A. It was sandy land, and lemon groves.

Q. Lemon groves take more water than oranges for their irrigation?

A. Yes, sir; I think so.

Q. How much more?

A. To make a success they ought to have double the water.

The Court: Q. Where the soil is the same?

A. I know the soil has something to do with it. The soil in my district is pretty much the same. There is a few places that have adobe soil, but it is principally gravel in my district.

Q. Even where the soil conditions are the same, lemons require more?

A. Yes, sir; the trees might look all right without it, but they don't grow to size quick enough.

Mr. Haskell: What was the minimum delivery in 1908 of water per head?

A. 20 inches half time. That is, 12 hours instead of 24.

Mr. Burr: Q. Is that 1908?

A. 1908?

Mr. Haskell: Q. Yes, sir.

A Excuse me. I misunderstood the question. I thought you said '98. I would like to correct that. 1908, 40 inches.

Q For full time?

A Yes, sir.

Q Why do you say there was a shortage in 1908?

A I don't think I said there was a shortage in 1908.

Q I understood you to tell me that on cross examination.

A 1898, I should have said. That is what I have reference to all the time.

Q I asked you about 1908.

A I misunderstood you.

Q There was a good supply in 1908?

A Yes, sir; we had a very good supply.

Q And enough toxsatisfy the needs of the colony?

A From thepumping plants and what other sources we had, yes, sir.

Q And you made a good crop of oranges?

A A very good crop.

Q Then the orchards which received the most water were those that have 30 shares to 10 acres only got one inch to 3-1/3 acres?

A According to thekind of heads we are running.

Q Well, when you are running your maximum head of 50 inches for 24 hours.

A If we were running a 30 inch head and had 30 shares. But if we were running 40 inches, it would be that much more.

A. Yes, sir. I discharged the question I thought
you said 1920. I could give a correct answer, 1920, do you
mean.

Q. The fact stand.

A. Yes, sir.

Q. Did you ever see a airship in 1920?

A. I won't say I was there as a witness in 1920.

Q. I understand you to tell me that you saw airships.

A. 1920, I meant here now. That is what I was talking
about in all my life.

Q. I asked you about 1920.

A. I misunderstood you.

Q. Have you flown every in 1920?

A. No, sir; we had a very good supply.

Q. Is supply sufficient for needs of the Army?

A. Pretty regularly; sometimes we have enough to go
by, sir.

Q. Are you taken a grid map of Europe?

A. A very good map.

Q. Does the account which contains the most major cities
have more than 10 names in 10 cents only are you into
a-1910 report?

A. Referring to number of books we are reading
now, that you are reading, your number has of 20
books for to later.

Q. If we were reading a 20 book and had 10 pages, is i
if we are reading 40 books, it would be 10-100 pages.

RE-DIRECT EXAMINATION.

Mr. McKinley: Q What service did you provide in connection with the delivery of domestic water of the Ontario Power Company?

A I saw that the water was in the pipe lines of each user. Their pressure pipe is attached to the sand boxes at the corners of the ranches. Then they are in pressure pipes and I see that the water is running in the lines.

Q Do you have anything to do with examining waters?

A No, sir.

Q Now you referred in your cross examination or you were asked about this water being used for irrigation: Is all the water received by the San Antonio Water Company used for irrigation?

A Yes, sir.

Q What about domestic purposes?

A That is the Ontario Power Company water.

Q The water that the city of Ontario uses?

A No; of course; I didn't think of that. The town of Ontario and the town of Uplands owns so much stock which I think is used for domestic purposes.

Q That is part of the 6000 shares which they own?

A Yes, sir.

Q Do you know on how many shares of stock the company in Upland received water?

A 120.

Q Do you knowon how many shares the city of Ontario ~~xxxx~~ receives water?

A No; I do not.

Q It is not in your district?

A No, sir.

Q Now with regard to these measurements: Do I understand that you made the measurements of these waters coming in from the different sources?

A I make the measurements at my convenience. The engineers, of course, measure it.

Q Did you make any written reports?

A No, sir.

Q You don't know of any written reports in existence anywhere of your measurements?

A No, sir.

Q Did you ever turn any in to the office of the company?

A No, sir.

Q Now with reference to the surplus water in June, 1907: How did that come to exist?

A I don't remember the dates there. If there was any water at that time--

Q About that time. Mr. Haskell asked you if there was any surplus water.

A There was surplus water in 1907, but I don't know how long it lasted.

Q What occasioned it?

A The heavy rainfall. There was more water coming down the canyon.

Q How early did irrigation begin that year?

A The first of May. A great many people didn't want their water even then.

Q What is the usual irrigation season, Mr. Fuller, or is

Q. Is it not so, Mr. Blakiston?

A. Yes, sir.

Q. Now with regard to these measurements, Mr. Blakiston, that you made the measurements of these various tanks in Zone 2 from the different sources?

A. I made the measurements as my measurements, the measurements, of course, concerned it.

Q. Did you make any written reports?

A. No, sir.

Q. You don't know of any written reports to solicitors concerning of your measurements?

A. No, sir.

Q. Did you ever see any in the office of the company?

A. No, sir.

Q. Now with reference to the respite water in June, 1957: How did that come to exist?

A. I don't remember the dates there. If there was any water in that time.

Q. Have that also. Mr. Blakiston, would you if there was any respite water.

A. There was respite water in 1957, but I don't know how long it lasted.

Q. That's correct?

A. Its long related. There was more water coming from the Dungan.

Q. Now early in irrigation begin this year?

A. The first of May. A great deal more people didn't begin water until June.

Q. What is the usual irrigation season, Mr. Blakiston, or is

there a usual irrigation season?

A Usually from the first of May to anywhere from the first of November to the first of December.

Q How wide has been the range of variation since you have been zanjero?

A Some seasons we irrigated all the season and never stopped at all.

Q You mean all the year?

A Yes, sir. When we had a light rainfall.

Q You spoke of orchards receiving water upon more than one share to the acre. Those orchards received whatever delivery corresponds to the number of acres they held?

A Yes, sir.

Q With reference to the character of those orchards receiving that amount, are there any other orchards of the same character of soil and condition in your colony or district?

A Yes, sir.

Q How large a portion of them receiving that large amount?

A There is quite a large portion. There isn't so very much difference in the soil in their district. There is some heavy land, but as a general rule most of it is gravelly land.

Q Can you approximate the acreage of lemons in your district?

A I couldn't very accurately. There is not a very large acreage of lemons.

Q About what?

Where's Lamar Irrigation Account?

A. Usually from the first of July to September. This is the first of October to the first-of December.

Q. Has this job been the cause of particular alarm you have been employed?

A. Some members are irrigated all Commission and other employees all.

Q. Has anyone sold the plant?

A. Yes, sir. Then we had a light outfit.

Q. You speak of probably replacing maybe some more. Have you been in the area, Plant Commission employee military experience in the matter of more than half?

A. Yes, sir.

Q. Did referred to the character of those crops in selling this account, are there any other problems of the character of soil and conditions in your selling or operation?

A. Yes, sir.

Q. Can large a portion of them involving lint large amount?

A. There is quite a large portion. Some half's in very most difficult is the soil is extremely difficult. Then a some [illegible] half. A great deal more of it is greatly land.

Q. Does pre-equipment an average of three in your operation?

A. I don't very frequently. There is not a very large average of [illegible].

Q. [illegible]

A Probably 200 acres; not to exceed 300, I think.

Those are of varying age also?

A Yes, sir.

Q Are there any old lemon orchards among them?

A Yes, sir; there is no lemon orchard as old as the oldest orange grove, but there are few quite old lemon orchards.

Q About how ~~xxxxx~~ old?

A About 20 years.

Mr. Britt: When you speak of the necessities of orchards of different ages for different quantities of water, you have reference, I suppose, to the irrigating season? An orchard which you say requires an inch to 3-1/3 acres requires it during the irrigating season?

A Yes, sir.

Q And not throughout the year? A No, sir.

Mr. Haskell: Some of these orchards had a surplus of water?

A None of the orchards has any surplus. Some individuals that own water that don't own orchards have been renting.

Q How is that? A Some of the individuals in the colony that owned water stock that don't own orchards that they care to put it on rented their water out.

Q They have water to rent? A Some have done that.

Q About how many people? A It has varied very much. A number of years ago there was quite a number of them. Now there is very few. Not over a dozen people, probably.

Q How much water do they have to lease in that way?

A Not very much; Mr Q Harwood used to lease 40 or 50 shares; this year he is only leasing six shares.

Q That is the same Harwood that uses as much on his own land isn't it?

A Yes, sir.

Q He has more water than he knows what to do with on his own land?

A Well, he has not got very much land and he owns considerable waterstock.

Q Does this 4667 acres planted in the Colony include the lands which are supplied with water by purchase from Mr Harwood and other stockholders who have a surplus of water to sell, as well as lands which are supplied directly water water by the San Antonio Water Company?

A Yes, sir.

The Court, Q Do you mean by purchase from the owners of the shares?

A Mr Harwood had some surplus water, and one or two other ranchers would rent it from him.

Mr Joliffe, Q It is all represented by the San Antonio stock?

A It is all San Antonio stock.

-o-

C. H. DYER.

C H Dyer, a witness called by defendants being first duly sworn, testified as follows:

Direct Examination

Mr Jolliffe. Q Where do you reside?

A In the Desert at Johnnie.

Q Have you ever resided at Ontario?

A I have resided there 20 years altogether.

Q And during what time did you reside there?

A Well, I came to Ontario 15 years ago.

Q What time did you not reside there during the 20 years?

A During the years from 1897 to 1902 I did not reside there and again the last year.

Q What connection have you had with the San Antonio Water Company during the period that you were there?

A From 1894 to 1897 inclusive I was manjero, and from 1902 to 1906.

Q Will you describe how the distribution of water was carried on under your management as manjero, by the San Antonio Water Company?

A When I took charge it had not been systematized; the groves were young and it had been run - the pipe lines were inadequate and it had been rather irregularly, and from that time there was a thorough system organized; new pipe lines were laid, distributing boxes put in, and a system organized by which the water was distributed to each irrigator in equal heads at equal intervals, so that each stockholder should receive an equal amount of water.

Q In what way was it determined how much water each stock-

holder should receive?

A. An estimate was taken at the beginning of the season as to the probable amount of water on hand; the amount of stock was considered, or rather the amount of land to be irrigated and the amount of water required, and this water was divided into the requisite number of heads, in order that the heads might come around once every thirty days; it requires eighteen heads of water to make the round of irrigation in Ontario, in thirty days; so by taking measurements from the different sources we ascertained the amount of water at the beginning of the month available, which will probably run for thirty days; we divided that water into heads, after deducting the water necessary for domestic purposes, and then estimate the size of our heads, so that each month a new estimate is made; the Santa Ana Water Company is a mutual benefit association and each member is supposed to have equal rights, and an equal amount of water.

Q. You base proportionate to his shares?

A. Proportionate to the shares; the water stock is not necessarily attached to the land.

Q. Where were the waters distributed on the stock delivered?

A. The water is delivered to the highest point of each lot to be irrigated.

Q. I mean in the way of distribution. That zone the distributing system of the San Antonio Water Company serve? Does it cover the Colony lands, or anything outside?

A. It simply is used within the colony lands, or used by the holders of the stock.

Q. Where one is to be used by the holders of the stock?

A Any part of the irrigation system.

Q Does the irrigation system cover anything except the lands in the Ontario Colony?

A No, sir.

Q Did your management in Zanjero use water delivered for domestic purposes also?

A Yes, sir.

Q Who received water for those purposes?

A The residents and the people living in the town, and the members received domestic water.

Q How did the people in the City of Ontario get domestic water?

A By owning San Antonio Water Company stock, and the water was delivered to them at a certain point, instead of being delivered in lands every thirty days.

Q To the people or to the City?

A To a point in their lines,- delivered into their lines at a point on our lines.

Q To whose lines was it delivered?

A The Ontario City lines.

Q What amount of stock did the Ontario City have?

A In 1906 they had 24 - - It was entitled to 24 inches of water; they had I think 240 shares of stock.

Mr Kurtz, Q Was that 1906 or 1907?

A In 1907.

Mr McKinley, Q What amount of water was delivered to the Upland Water Company? What amount of stock did the Upland Water Company have?

A Mr Miller has charge of that and I don't remember that.

Q In the distribution of water were there any times when the water would not go around in 21 days, while you were manjero?

A Not during the last period.

Q Not during from 1931 to 1933?

A Yes.

Q State whether you had anything to do with the diversion of the storm water over the Ojai's corn?

A I did not have any immediate supervision of it; I knew of it being done.

Q You simply observed it done?

A Yes, sir.

Q You distributed as I understand it, the water in the district other than Mr Fuller's, covering all the rest of the distribution system not covered by Mr Fuller?

A Yes, sir.

Q What was the acreage of citrus fruits planted in your district?

A I have a similar report of Mr Fuller that we have made out since yesterday, made from memory; This report could not be precise to tell the amount of acreage planted each year, as there is no means to get at that without a great amount of work, but from memory we could tell the amount of acreage planted previous to certain dates.

Q Well, will you state that?

A In my District, the amount of acreage previous to 1894, trees planted previous to 1894 was 2000 acres; from 1894 to 1900, 200 acres; from 1900 to 1909, 142 acres; making a total of 2342 acres; together with the amount already sworn

to by Mr Fuller, making a grand total of 4667 acres.

Q With reference to the portion thereof planted previous to 1894, can you give us any idea as to the relative area of these trees?

A Previous to 1894, for possibly four or five years, there was a considerable amount of planting, so that perhaps one-third or one fourth or one fifth of the amount previous to 1894 was planted within five years of that date.

Q And the other portion previous to that?

A Yes, sir.

Q During all this period that you have been in Ontario you have been acquainted with the raising of Citrus fruits?

A Yes, sir.

Q And the use of water?

A Yes, sir.

Q And the amount of water necessary to be used in connection with Citrus fruits?

A Yes, sir.

Q What in your opinion is the amount of water necessary for the proper irrigation of citrus orchards, explaining as to the various ages, and average it up as to the soil in your district there?

A The soil conditions vary; but a small orchard will get along nicely for six years on an inch of water to 10 acres.

The Court Q By a small orchard you mean a young one?

A From one to six years old, and from 6 to 15 years old, two inches of water is ample.

Mr McKinley, Q That amount would you say was sufficient?

A Well, it is sufficient to keep it in good growth and hour

the crops, with which proper care of fertilizing and cultivation.

Q. Proceed.

A. From 10 years, an inch to four acres is sufficient.

Q. From 10 years up to any age?

A. From 10 to 20 or 30 years.

Q. How about older than that?

A. I have not had any experience with trees older.

Cross Examination

Mr. Will, Q. Are you the same person of that name who was a director of the Ontario Power Company for a time?

A. No, sir; my father.

Q. In your district where you supplied water on Zanjero was any other concern operating for that purpose to distribute water besides the San Antonio Water Company?

A. Yes, sir; the Ontario Power Company, during the dry season months, they distributed water through their pipe lines to the different orchards that also had stock in the San Antonio Water Company.

Q. Were their pipe lines any different from the San Antonio Water Company's pipe lines?

A. They were similar lines, but separate; cement and concrete. They had no connection whatever with our pipe lines.

Q. Did the San Antonio Water Company cease to distribute water in the dry season months?

A. No, sir.

Mr. Jolliffe: I think the witness made a mistake in stating the Company that he said the Ontario Power Company; he meant to say the Ontario Water Company.

A Yes, sir; the Ontario Water Company; did I say Power Company? I meant the Ontario Water Company.

Q Then both those companies distributed water during the irrigating season?

A Yes, sir.

Q Where does the Ontario Water Company obtain its supply?

A North of Claremont, or within the city limits of Claremont.

Q Where is that situated with reference to the Ontario Colony?

A Two miles northwest.

Q Do you know approximately the quantity of water distributed by that concern? The Ontario Water Company, derived from thesource you mention?

A Sixty inches.

Q Supplying how many acres?

A I couldn't tell you that.

Q Does that company supply lands which are wholly unsupplied by the San Antonio Water Company, or does that supply lands which are inppart supplied by the San Antonio Water Company?

A Both; both lands that have no San Antonio Water Company stock and lands that have.

Q You speak of the Ontario Water Company as making its distribution of water during the dry months: Does it go out of business the rest of the year?

A It usually distributes water during the months of July, August and September.

Q And then does not distribute during the rest of the year?

A No, it does not.

Q For what reason?

A For the reason that water stock can be procured for land that has been irrigated during the other months that is not used by other stockholders.

Q Do you own San Antonio Water Company's stock?

A San Antonio Water Company's stock; yes, sir.

Q That water can be procured from the San Antonio Water Company's stockholders to irrigate the lands which are supplied by the Ontario Water Company at less cost than than Ontario Water Company can furnish water?

A Yes, sir; during the months which are not included in the dry season.

Q And the definition of the dry season there is July, August and September?

A Yes, sir.

Q Is there any other water company or anybody engaged in the sale or distribution of water in your district of some 2900 acres, besides the Ontario Water Company?

A No, sir; the Ontario Water Company; and the Power Company as a part of that company.

Q Part of what company?

A The San Antonio Water Company.

Q This Ontario Water Company which receives the water from Claremont has water to distribute during the rest of the year has it?

A By pumping; yes, sir; they get their water from wells.

Q I understand you to say that you as manager attended to the distribution of the water in Chaffeirict of some 2900 acres, from 1900 until 1908?

A Yes, sir.

Q But not inclusive of 1908?

A No, sir.

Q Including the year 1907?

A Yes, sir; six years.

Q In 1907 I understand you to say that the City of Ontario received 34 inches of water on 240 shares of stock in the San Antonio Water Company?

A Yes, sir.

Q And I suppose that all other stockholders received a similar apportionment of the water?

A Similar apportionment; yes, sir.

Q Now perhaps you can tell us without computation the number of shares which entitle the holder to a flow of one inch at that rate?

A That was equal to one and one-third inches to ten shares of stock.

Q Each ten shares entitled the holder to receive what?

A To receive 40 inches of water, 24 hours, once every 30 days.

Q And that was the equivalent of one and one-third inches in perpetual flow?

A Yes, sir.

Q And the total quantity of stock was 6000 shares?

A Yes, sir.

Q And the water available then for distribution at that rate would be 800 inches in perpetual flow?

A We have 900 inches to furnish that water, on account of domestic water and loss in seepage and loss in the general distribution of water; in the principal distribu-

bution of water is cannot be distributed down to a nice point of inches; there is bound to be a loss; so that in order to distribute 40 inches of water for the whole amount there had to be 900 inches of water running in the pipes;

Q In as much as the City of Ontario received this 34 inches I infer that you had the 900 inches running in the pipes that year?

A Yes, sir.

Q Did that include water distributed by the Ontario Power Company?

A Yes, sir; the Ontario Power Company owns water stock of the San Antonio Water Company which entitles them to water which they can distribute the same as any other stockholder of the San Antonio Water Company.

Q Well, did that include the water which was drawn from the Radio tunnel by the Ontario Power Company?

A It could be; yes, sir.

Q 900 inches?

A Within the 900 inches; yes, sir.

The Court, Q In speaking of the 900 inches do you mean all the water from all sources?

A From all sources.

Mr Britt Q And you include in that the water which the Ontario Power Company was entitled to have drawn from the Radio tunnel?

A Yes, sir.

Q All of that water went into a common fund or pool for distribution?

A Yes, sir.

Q Well, the Ontario Power Company you say had some stock in the San Antonio Water Company: What was the amount of stock? Do you know?

A I don't remember the amount of stock; but it was more than sufficient to cover all water that they sold - that they rented.

Q Do you mean for distribution and for irrigation?

A Yes, sir.

Q Outside of the City of Ontario?

A Yes, sir.

The Court Q Speaking of the distribution of domestic water, did the Power Company distribute any domestic water within the cities of Upland and Ontario?

A I think they sold at one time -they sold or rented some few shares to the town of Ontario.

Q You say rented: That was temporarily used?

A Yes, sir.

Q But generally speaking, the water supplied to the municipalities was by virtue of the stock which the respective cities owned?

A Yes, sir; the majority; the City of Ontario doesn't own a sufficient amount, and they rent water from whatever source they can get it from time to time to supply that amount. Besides these domestic systems, there are several other systems, private systems, where San Antonio stock is used to supply domestic pipe systems, scattered over different parts of the Colony.

Q Are there any of those other systems you speak of incorporated?

A No, sir.

Q But in any event they take whatever domestic water they use as shareholders of the San Antonio Water Company?

A Yes, sir.

Mr Brill, Q Are you a shareholder in the San Antonio Water Company?

A Not at present; no, sir.

Q Were you an officer of the company at any time, a director

A No, sir.

Q And as manager from 1922 to 1937 inclusive did you have charge of the distribution of both domestic and irrigation water, for both these purposes, in your district?

A Yes, sir.

Q You attended to the distribution for the Ontario Power Company of the water distributed by it?

A That was not in existence at that time.

Q The Ontario Power Company?

A No, sir.

Q Was not in existence from 1922 to 1937?

A Oh, 1922 to 1937 - Yes, sir.

Q Yes. Did you have charge of the distribution of that water they distributed for domestic use and for irrigation in your district?

A Yes, sir.

Q Did you receive any separate compensation from the Ontario Power Company?

A No, sir.

Q Did you receive all of your compensation, your wages or salary from the San Antonio Water Company?

A Yes, sir.

Mr Bardell, Q The Ontario Water Company irrigates how large an area of land?

A They irrigate different pieces of land within the Ontario Colony lands.

Q Their lands are included within this total acreage that you have already given?

A Yes, sir.

Q And therefore water over that is used when they operate their own plant.

A Sixty inches.

Q Why don't they operate there the entire season?

A Because the lands don't require it; the San Antonio Water Company has sufficient and can be obtained cheaper.

Q They only operate in July, August and September as is mentioned yet.

A Sometimes in October; but the usual months are during the dryest months.

Q And it is cheaper to let the water run out of the Radio Tunnel than it is to pump it on their own lands isn't it?

A I don't know anything about that; a stockholder of the San Antonio Water Company has the right to use the water which he is entitled to at any time of the year.

The Court, Q This 55 inches that you speak of as belonging to the Ontario Water Company -- Is that by virtue of holding stock in the San Antonio Water Company?

A No, sir.

Q Where does that water come from?

A It comes from the wells at Claremont.

Mr Meikell, Q As to this 60 inches, some of the consumers of the water of the Ontario Water Company also have stock in the San Antonio Water Company?

A Some of them do and some of them do not.

Q But they are all supplied and are enumerated in the total number of acreage that you have given?

A Yes, sir.

Q And all supplied from the San Antonio water system?

A Yes, sir.

Q ~~[illegible]~~ And those who do not have stock, of those you have spoken, rent stock from those who have a surplus?

A Yes, sir.

Q About how many of those are there? How many acres of land are they irrigating?

A I can't give that from my memory. Because the system is so varied, the demand is so varied; some season of the year there is a great deal more stock rented and used than other seasons of the year; some years the entire amount of stock, in past history, has not been used.

Q I understood you to say there were other pumping plants in operation than those operated by the Ontario Water Company, and not owned by the San Antonio Water Company?

A No, sir; I didn't say that.

Q No other pumping plants there?

A No, sir; there are none coming into the Colony of Ontario.

Q Yes.

A No, sir.

Q And no water brought in from any outside sources and

distributed through this small trial of the acreage that you have given?

A No, sir.

Indirect Examination.

Mr. McKinley: How long has this Ontario Water Company been operating?

A Ten years.

Q Has it operated in the last few seasons?

A Yes, sir; not as much as it did previously; but it has operated nearly every season.

Q It has a pumping plant at Claremont?

A Yes, sir.

Q Now, the supply furnished by the Ontario Water Company is entirely additional to anything furnished by the San Antonio Water Company?

A Yes, sir.

Q And is not represented by stock at all? It has no relationship to the stock?

A No, sir.

Q Now, with reference to water being furnished to other parties for domestic uses: what other parties are there there?

A Well, there are residents in the outlying suburbs of Ontario that have systems whereby water is turned to them; then there are parties who have subdivided plats of land, who have water turned in at certain points according to the stock which they own.

Q I would like for you to give in detail the different parties and the amount of water furnished, and the amount of stock upon which they take water for domestic purposes.

The Court: Then you do not offhand?

A Not completely; I have two systems which take five inches each to supply - -

Mr McKinley: Well, we will take that up afterwards.

The Court: Will there be some systems outside of your district that you do not have direct personal knowledge of that Mr Fuller might know better about?

A Yes, sir.

Redirect Examination

Mr Maxwell, Q Was it partof your duty to measure the water flowing over the weirs from the various sources of supply of the San Antonio Water Company?

A No more than simply to ascertain the amount so that I could regulate my heads; I make no official report of that to the head office whatever; I simply make these measurements to ascertain the amount of water which we had on hand, in order to regulate my heads each month; but it was not an official measurement and did not have to be reported to the office.

Q Did you make any memoranda of those measurements?

A No, sir.

Q Were you instructed not to do it?

A I was not instructed not to do it or to do it; and I did it for my own benefit and therefore I did not keep any record of it.

Q Well, do you know any officer or employe of the company that did keep a record of those measurements?

A I understand there was an engineer that did keep a concise recordof the flow of water from different sources.

Q Did they have any self-registering weirs?

A Yes sir.

Q And it was part of your duty to see that they were kept in order?

A Yes, sir.

Q And you had to place the registering sheets in the weir?

A Yes sir.

Q Who did you turn those sheets over to?

A To the officers in the office of the San Antonio Water Company.

Q You made that report to them?

A I simply turned over the sheets; it was no report whatever

Q It was your duty to adjust those self-registering weirs was it not?

A Yes, sir.

Q How many of those were placed you were?

A I simply had charge of one register.

Q Where was that?

A At the mouth of the Mills tunnel.

Q Was there a register on the ditch leading from the San Antonio Canyon?

A Not of late. Yes, sir.

Q Was there a registering weir on the San Antonio tunnel?

A A portion of the flow there was but I never took any measurements there.

Q Was there a registering weir on the Jess Street ditch?

A Yes, sir; that checked by other parties.

Q Do you know who kept it?

A No.

Q Now, it was your duty to keep the self-registering weir

weir in order and place the sheets and keep the clerk in order that operates it at the Radio tunnel, was it?

A Yes, sir.

Q And you did that correctly did you?

A Yes, sir.

Q And once a month you turned those sheets in?

A As soon as they were filled, whatever time it took.

Q How often did you have to adjust them?

A I presume once a month or something like that; I don't know.

Q During what years did you keep such a register in order?

A During the years of 1906 and 1907.

Q And 1908?

A Not 1908; no, sir.

Q You haven't kept any since 1906?

A 1907.

Q You didn't keep any last year?

A No, sir; I wasn't anywhere last year.

Q What officer did you turn those sheets in to?

A The President of the Company.

Q And what was or looks?

A Yes, sir.

Q Do you know whether or not such registers and registering weirs were kept before your time or not?

A Not before my time; there were such registering weirs kept in other places that I didn't have charge of.

Q When did you begin your work for the company?

A The 1st time in 1902.

Q And did you have have charge of the Radio tunnel at that

time?

A Yes, sir.

Q Was there a registering weir there at that time?

A I think there was one higher up; there was none at the mouth of the tunnel I think at that time.

Q There was one in the tunnel itself wasn't there?

A Yes, sir.

Q At the weir a little from the mouth of the tunnel. And did you have charge of that weir?

A No, sir.

Q Who did?

A I don't know.

Q Now, in 1906 was there a weir there?

A I couldn't tell you.

Q What year do you say you began to have charge of that weir, of that register and weir?

A 1906 and 1907 I had charge of the - -

Q Was there a registering weir there in 1906?

A I don't remember.

Q In 1904?

A No, sir; I think not; I don't remember.

Q There was a system of measurements wasn't there?

A I presume there were; I didn't have charge of that department; it wasn't in my line and I didn't pay but little attention to it.

Q You didn't have charge of it?

A No, sir.

Q Do you know who did?

A I think it was did.

Q. Yes, who had charge of the registering weir on the 16th street well?

A. I don't know.

Q. And the San Antonio Tunnel?

A. No.

Q. And the ditch leading from the San Antonio Creek?

A. No, I don't remember.

Redirect Examination.

Mr. Kinney, Q. What service did you perform with reference to the handling of the water of the Ontario Power Company?

A. Simply as any other stockholder in the San Antonio Water Company.

Q. What did you do with reference to Chaffey water? Anything? The Ontario Power Company?

A. No, I had nothing to do with it, any more than to distribute it, according to the orders given.

Q. That is you distributed it on the stock they had to the Ontario Power Company?

A. Yes, sir.

Q. And you had nothing whatever to do with doing any work for the Ontario Power Company?

A. No, sir, none whatever.

Recross Examination.

Q. Didn't you look after the distribution of their water to their consumers - the Ontario Power Company consumers?

A. No, sir.

Q. Who did?

A. The private zanjeros of the different systems had that in charge; I simply turned over the amount of water which

was represented by the stock they held, into their pipe lines and then my part of the duty was ended.

Q. Into whose pipe lines?

A. The pipe lines of whatever company it was turned into.

Q. Were you here when Mr Fuller testified?

A. Yes, sir.

Q. As I understood him it was part of his duty to see that the domestic supply which went to the users of the Ontario Power Company was put into the pipes: was that so in your case?

A. That is so far as the separate ranches were concerned, scattered around over the Colony, but not so far as any separate domestic water systems were concerned.

Q. I am not speaking of separate domestic water companies or aggregations of individuals operating as companies, but of the direct consumers of domestic water; was it or was it not part of your duty as zanjero of the San Antonio Water Company to turn into the domestic systems the water which the respective users of domestic water consumed?

A. Yes, sir; it was; I kept sufficient water running in the different pipe lines so that the users of water touching these lines could obtain a continuous flow of domestic water; this required a small amount of water, perhaps an inch in each line, practically water that could not be measured; for instance down one line ten consumers of water, they would not consume an extra inch continuous flow; in making our measurements over our weirs for our heads, we always make allowance for the extra inch or two or three for seepage, and that would include the extra inch the people would use, so that

virtually i[illegible] made but little difference in the regular distribution of the water. [illegible]here there were pressure pipe lines laid there was always a point [illegible]ere we could measure the exact amount of water in to the system.

The Court, [illegible] Were there ever any times when any of the laterals were not used for distributing water for irrigating purposes:

A. Sometimes there were; but those laterals always distributed into [illegible] or was connected with some other distributing pipe thereby the water was not wasted, and the water was caught below and distributed by some other distributing box.

Q. When the laterals were not used for irrigating purposes you did turn in enough to supply the domestic users in the Ontario Power Company?

A. Yes, sir; that is right.

Mr Haskell, Q. In this total acreage that you have given as supplied with water, you have also included in that total acreage the City of Ontario have you not?

A. No, sir.

Q. You have included the orange orchards that are within the city limits:

A. The orange orchards within the Villa that are irrigated by irrigation water are included, but not within the city.

Q. Now, some of these very persons who own orange orchards and receive water from the San Antonio Water Company for irrigation are also supplied with domestic water by the City of Ontario are they not?

A. If they live within the city limits they receive domestic water and pay their regular water rates, regardless of whether

they are receiving water for irrigation or not.

The Court, Q. Is the total acreage of 4667 acres which you have given, is some part of that within the city limits of Ontario?

A. Yes, sir.

Q. And no part of it within the city limits of Upland?

A. When I speak of the city limits I mean the portion under the city domestic water system; the city limits include the whole colony as far as city limits are concerned,- every part of the Colony is included in one or the other of the cities.

Q. In speaking of the city, which you refer to, as the city of Ontario, that does not include any orange groves, but it is simply the accumulation of buildings which you call the city?

A. Yes, sir; the town lots under the domestic water system; they are not included in the acr age.

Mr Hardell, Q. And what you have said in regard to the City of Ontario also applies to Upland, doesn't it?

A. Yes, sir.

Q. In that respect?

A. Yes, sir.

Mr Pritt, Q. You say the whole of the territory called the Ontario Colony lies within the limits of either the City of Ontario or the City of Upland?

A. Yes, sir; it is incorporated within the city limits of either one of those two towns.

The Court, Q. The entire Colony?

A. I think so if I am rightly informed. That is my understanding

Mr Haskell, in Ontario number 4 Precinct, do you know where that is?

A. That is the west precinct.

Q. Yes, I believe so. Is that in the City of Ontario?

A. Well, I can't say just where number 4 is.

The Court: I am inclined to think the witness is confused in regard to that matter; I don't know as it cuts any figure here, except as to a proper understanding of the witness's testimony.

A. The Town limits of Ontario reach up across the Santa Fe track, in front of the Santa Fe Depot, out to Euclid Avenue; The Upland City begins there and goes up the avenue and jogs out on 16th street, and takes the whole upper portion of the Colony; that is my understanding; while Ontario takes the other portion; they lay up to each other.

Mr Haskell Q. Is San Antonio Heights within the City of Upland according to your understanding of it?

A. Yes, sir; may be I am mistaken; may be it don't reach up as far as that.

The Court: Mr Joliffe, can't you tell us the situation there and set us straight there, and I presume none of you other gentlemen will have any objection to that.

Mr Joliffe; Yes, I think I can. The City of Upland embraces all of the Colony of Ontario which lies north of the Santa Fe railroad and east of Euclid Avenue, and also all of the Colony of Ontario lying west of Euclid and north of 16th street; the balance of the Colony of Ontario is all embraced within the City of Ontario; and both corporations reach out far beyond the original Colony limits, both to the

east and to the west. San Antonio Heights, by the way is not within the City of Upland; the north boundary as I understand is at 24th street.

Mr Britt: Is Euclid Avenue the east boundary of the City of Upland?

Mr Joliffe: No, it is the west boundary for half a mile, from the Santa Fe railroad to 16th street it forms the west boundary of the City of Upland; the east boundary is somewhere east of Campus Avenue, and I think about Cucamonga Avenue.

The Court: Then the witness is substantially correct and the two municipalities include the entire Colony?

A The two municipalities include the Ontario Colony, with the exception of a small portion in San Antonio Heights, and they include a great deal that is not in the Colony.

Mr Curtis: The Ontario Colony lands do not go to the County line on the west?

Mr Joliffe: Oh no.

Q What was the area of the Ontario Colony originally? Do you know Mr Dyer?

A I did know once but I can't tell you now.

Mr Britt, Q I want to return for a moment to this matter of your duties as zanjero: I understood you to say that I asked you some questions a while ago that besides your business of distributing water for irrigation purposes for the San Antonio Water Company, that you attended also to the distribution of water for domestic purposes by the Ontario Power Company: Is that correct?

A So far as it related to individuals living on ranches close on our pipe lines that derived their water from our

irrigation lines.

Q. Well, there are two or three hundred of them are there not?

A. Yes, sir.

Q. Do you know just the number there are?

A. I don't know just the number, but there is fully 250.

Q. In your district?

A. All together. Yes.

Q. Does that or did that Ontario Power Company make any distribution for domestic purposes elsewhere than on Orange Lands? Did it make any distribution for domestic purposes in the City of Ontario during the year you were zanjero?

A. Only as it may have sold or rented stock to the town; the Ontario Town I think has rented some stock from the office, held by either the Power Company or the San Antonio Water Company; I don't know which; I received my report of what was rented and I turned in the amount of water.

Q. Do you know from which source this water came which you distributed for domestic purposes to the 200 or 300 renters?

A. My understanding was and I know that it was Ontario Power Company water, whether it was from the stock which they owned or from the water which they owned I am not able to say at present.

Q. You spoke a little while ago about water received by the Ontario Power Company on stock which it holds in the San Antonio Water Company?

A. Yes, sir.

Q. Do you under stand that it distributes that water in the City of Ontario or within the Ontario Colony?

1 A. The same as any other stockholder; stock holder, the same
2 as any other member of the stock company.
3 Q. It sells that water?
4 A. It can rent that water or sell it.
5 Q. Has that been its custom?
6 A. No, sir; they have not sold any but they have rented some.
7 Q. What do you mean by renting? Do you mean supplying for
8 a limited time?
9 A. For a certain limited time
10 The Court, Q. That is, not disposing of the stock, but per-
11 mitting somebody else to use the water which they were en-
12 titled to by virtue of their ownership of stock?
13 A. Yes, sir.
14 Mr Britt, Q. Is that the only company that sells that
15 for domestic purposes?
16 A. Yes, sir; that is the only company that can do it; the
17 San Antonio Water Company can't do it.
18 Q. Do they supply that domestic water for a limited time -
19 for a month or a year?
20 A. Yes, sir; for a month or a year or whatever time they
21 see fit.
22 Q. Suppose the individuals construct their houses and
23 connect their supply pipes with the distributing pipes of the
24 Ontario Power Company, under that arrangement are they lia-
25 ble to have their water shut off next month or next year?
26 A. They are in the same contingency that they would be in
27 any water company; that often happens under any water com-
28 pany; they don't have a life lease on it.
29 Q. Do they generally receive that water through meters?

A. They have meters when it is necessary but often it is simply estimated by a maximum and minimum amount of water, according to the previous readings of the meter; but it is distributed under a meter system - so much for so many thousands of gallons used. That is estimated by either reading the meter or estimating.

The Court, Q. Do you mean they put in meters temporarily to get at the amount used?

A. Yes, sir; that is done in cases; yes, sir.

Mr Britt, Q. That water which is rented through the meters is that derived from any certain single source by the Ontario Power Company, or does it take it from the pipes generally of the San Antonio Water Company?

A. From the pipes of the San Antonio Water Company, wherever it is feasible to get it.

Mr Mitchell, Q. How many shares of stock of the San Antonio Water Company does the Ontario Power Company own?

Mr McKinley: Objected to as not the best evidence.

A. I don't know.

Q. Do you know whether it owns any or not?

A. Not from my own knowledge; no, sir.

Q. You have had in charge the distribution of the water to it?

A. Yes, sir.

Q. And you based that on the stock of the San Antonio Water Company that you found in the possession of the Ontario Power Company?

A. Yes, sir; as reported to me by the officers from the office.

Q. Can you tell how many shares of stock that was by referring to your books?

A. No, sir; I was by referring to certain lists that were furnished to us, at one time.

Q. Have you those lists here? A. No, sir.

Q. Do you know how many inches you received?

A. Some?

Q. To the Ontario Power Company in 1907, the last year you were there?

A. No, sir.

Q. Have you any idea of the amount?

A. It wasn't very many inches but I can't give you an approximate estimate.

Q. Will you look for that memorandum that you speak of and produce it here? A. That memorandum?

Q. The memorandum upon which you based the apportionment of water to the Ontario Power Company?

A. If my successor has not destroyed it I can produce it.

Q. Are they in the habit of destroying such papers?

Mr McKinley: Objected to as calling for the conclusion of the witness.

The Court: Sustained.

Mr McKinley: Q. Are there any lemon orchards included in this acreage of citrus fruits?

A. Yes, sir.

Q. About how much acreage, or do you know?

A. I should say one fourth of the amount.

Q. As to acres, are they running in acres like the other portion?

A. Yes, sir; similar.

The Court: Mr. Haskell, did you ask the witness to produce those memorandum here?

Mr Haskell: Yes, sir.

A. I can produce you the list or scrips of stock issued by the stockholders of the San Antonio Water Company during the year 1907, which was furnished to me by the office, upon which I based my irrigation schedule, if the Court requires.

Mr McKinley: We will produce the stockbooks.

Here the Court takes a recess until 10, 10 a.m.

J.W.McKINLEY.

IN THE

Superior Court

OF THE

County of San Bernardino

State of California

Cucamonga Vineyard Company et al.,

Plaintiffs

vs.

San Antonio Water Company, et al.,

Defendants

Vol. 27.

Wednesday, March 10, 1909

INDEX

I. BENJAMIN, Official Reporter

Wednesday, March 10th, 1909. Twenty-seventh day.

Mr. Joliffe: We offer a deed from Isaac W. Hellman and Isaiah M. Hellman to the Cucamonga Homestead Association dated July 3rd, 1874, recorded March 28th, 1876, in Book P, of Deeds, page 386.

Mr. Britt: May I inquire the general purpose and object of this offer?

Mr. Joliffe: For the purpose of tracing title to some of the lands on which some of these wells are situated, the Harkeell well more especially, and affecting the Atwood case and the Upland Water Company case.

Mr. McKinley: Showing the conveyance of Cucamonga Creek also. I ask that the reporter copy this deed in full.

Mr. Joliffe: I also offer a deed from the Cucamonga Homestead Association to L.M.Mott, dated November 25, 1884, recorded the 4th day of December, 1884, in Book 39 of Deeds, page 174.

Mr. Britt: This offer like a good many other muniments of title, made by the defendants in the course of the evidence, does not on the face of it show any sort of pertinence or relevance. I suppose that it ought to be understood and the Court, I think, will allow us that privilege, to make the objections at any time hereafter that any of those deeds are irrelevant for the purposes of the case or incompetent, or any other objection that ought to be made.

The Court: I will be willing to go further than that if agreeable to counsel, to the effect that any of the evidence offered may be stricken out on motion by either party before

Wednesday, June 17th, 1931. Twenty-seventh day.

Mr. Collins: I'm going to read from Issue 7, Volume and Number 2, Collins v. the Commonwealth Investigation Board July 2nd, 1931, reported Ward 2931, 1931, 1-, page 1, at page, page 2.

Mr. Irvin: May I inquire the general purpose and object of this action?

Mr. Collins: For the purpose of showing this to some of the lands on which some of these wells are located, the Commonwealth will very reasonably, and affording the witness more and his values more complete data.

Mr. Collins: Showing the proceedings of Commonwealth Court also. I was just the reporter copy this dated in 1931.

Mr. Collins: I am going from the Commonwealth Investigation Board decision in Issue 7, Volume 2, 1931, referred to the day of December, 1931, in part in at least page 1?

Mr. Irvin: This also like a good many other decisions of this, made by the defendants in the matter of the citizens, also not on the issue of it when any work of prospecting or research. I suppose that it might be in controversial and the court, I think, will allow me such objections, or make the objection of any this reporter but any of these lands are supposed for instance on the land or Commonwealth, or any other relative that would be in order.

The Court: I will be willing to go further this but if agreeable to counsel, in the attempt that any of the evidence offered may be objected and be ruled in order to save time

final determination. There is a lot of this evidence that we cannot see the effect of at present, and I think the objection ought to be considered more at the final hearing.

Mr. Britt: That is agreeable to us.

Mr. McKinley. That is all right.

Mr. Britt: We do not want to be making captious objections.

The Court: I think it is only fair to counsel and to the court, to state that there are many objections that the Court is not able to pass ob without knowing the full scope of the case.

Mr. Jolliffe: We offer in evidence a deed from L.L.Mott to J.F.Haskell, dated December 3rd, 1884, acknowledged the same day, and recorded December 4th, 1884, at Book 39 of Deeds, page 170.

Mr. McKinley: The defendant Union Trust Company of San Francisco offersin evidence a ~~deed~~ Deed of Trust made by the Ontario Power Company to the Union Trust Company of San Frencisco, dated the 2nd day of January, 1902, and recorded on the _____day of _____, _____. I will ascertain and furnish the ~~rec~~ date of the record in this county, and we ask that it be marked Defendants' Exhibit I.

It recites the purposes for which the Ontario Power Company was organized; then recited a resolution of the Board of Directors, calling a meeting of the stockholders and directing notice; then the giving of the notice of the object to submit the question of incurring bonded indebtedness; then a meeting of the stockholders; then the direction to the Board of Directors to carry out the resolution ~~ni~~ for the incur-

ring of bonded indebtedness and of the filing of the certificate showing these proceedings and showing compliance with the provisions of the Code; then the passage of the order directing the bonded indebtedness of said Company to be created in the sum of $400,000.00, payable 30 years after the date of the bonds, and that the bonds of the company be issued to the number of 400 for the sum of $1,000.00 each, reciting the interest and so on, and that the Union Trust Company of San Francisco be declared and chosen as Trustee, and that the bonds be in the form set out, payable to bearer, and the execution by the Trustee of the certificate shall be conclusive evidence that the bond is secured as above referred to, then setting out the form of that indorsement; and then the resolution for the attaching of coupons in a certain form and a certificate of the Trustee in a certain form; then a further provision that the bonds be signed by the President and Secretary; then that the corporation execute and deliver to said Union Trust Company of San Francisco, California, as Trustee, a mortgage or deed of trust, transferring and mortgaging all and singular the property of this Company wheresoever situated, including all lands, properties, rights, franchises, rights of way, easements, appurtenances, privileges, interests, plants, machinery and equipments, and all other property of whatosever kind and nature, whether real, personal or mixed, nnow acquired or which may be hereafter acquired, or held, or owned by this corporation, with such provisions regarding breach of the obligations of said mortgage or deed of trust, or foreclosure or entry into possession, or operation of the property, and the right to con-

vey, and then running on with repairs, and alterations, and so on, and providing for the establishment of a sinking fund; then reciting the fact that the Board of Directors authorized and directed the Ontario Power Company to execute and deliver this instrument to the Union Trust Company of San Francisco as Trustee, transferring and mortgaging all and singular the property, rights and franchises of said company as well as that which it may hereafter acquire, and reciting that the President and Secretary were authorized and directed, to execute, acknowledge and deliver this instrument to the Union Truste Company of San Francisco, as Trustee in the name of, and for andon behalf of, and as the act and deed of said company, the Ontario Power Company, and to attach the seal thereto; and reciting that this instrument was incorporated in said resolution therefor and forms a part of said resolution; then reciting that the bonds and interest coupons have been executed and are ready to be authenticated by the trustee and to be issued; and then follows the indenture itself -- Now, therefore, this indenture witnesseth; that the Ontario Power Company in consideration of the premises and of One Dollar to it in hand paid by the Union Trust Company, of San Francisco California, as Trustee, the receipt whereof is hereby acknowledged, and in order to secure payment of said bonds and coupons, and the faithful observance and performance of all the covenants and obligations of this instrumentp has grantedn bargained, sold hypothecated, pledged, remised, released, conveyed, aliened transferred, assigned, mortgaged and confirmed, and by these presents does ~~grant~~ grant, bargain, sell, hypothecate, pledge

remise, release, convey, alien, transfer, assign, mortgage and confirm, unto the said party of the second part, the Union Trust Company of San Francisco, California, as Trustee and its successor or successors in this trust, and its assigns forever, all the following described land, franchises, real and personal property, that is to say:

And then follows a long description, pages 11, 12, 13, 14, 15 and16, down to the words "To have and to hold" on page 16. Then following that description the provisions of the deed, "to have and to hold to the Union Trust Company for the only proper use, benefit and behoof of said party of the second part, its successors and assigns, in trust, and then describing the trust, and setting forth the duties of the Trustee in case of default and the various duties and powers of the Trustee, which I don't think need to be written out, but of course the deed will be here for examination. Providing further for the delivery of the bonds and various other provisions for the carrying out of the trust and the performance of the obligations and the compensation of the trustee and the proceedings for foreclosure and so on, and the change of trustee, and so forth, andshowing its execution by the Ontario Power Company by its President and Secretary, and the seal attached, and the necessary affidavit under the chattel mortgage law.

(The deed offered from Isaac W.Hellman and Isaiah M.Hellman to the Cucamonga Homestead Association, will be found extended in full in this transcript at page hereof; deed, from Cucamonga Homestead Association to Mott, and from Mott to Haskell, and Exhibit I, will be found, so far as a copy

of the description of the property conveyed is concerned, at page [illegible] hereof.

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Mr. McKinley: For the purpose of showing title to the Frankish and Stamm property, we desire to offer in evidence the judgment roll in the case of the San Antonio Water Company vs. Charles Frankish and a number of others named there, in case Number 7,427 of this court. That was the judgment roll in the case in which the foreclosure was had of these lands. And following that I offer a deed from Henry Ingram, a commissioner appointed by the Superior Court to carry into effect the judgment contained in the judgment roll, to the San Antonio Water Company, which deed is dated the 5th day of September, 1899, and is recorded on page 87 of Book 2776, records of San Bernardino County, and describes lot 301, 302, 303, 304, 415, 416, 417, and 418 of Ontario Colony Lands according to the map on file in the office of the County Recorder of the county of San Bernardino, together with all waters developed therein, and all water rights of whatsoever kind or nature thereunto appurtaining. And also describing some blocks on San Antonio Heights which I take it have nothing to do with this litigation.

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Mr. Joliffe: I offer also a deed from J.F.Haskell to George A. Haskell, dated February 25th 1888, recorded in Book 73, ate page 47, conveying lot 6 in block 16, of the Cucamonga Homestead Association, with water rights.

-o-

E. P. FULLER.

E. P. Fuller, previously sworn, recalled by defendants, testified as follows:

Direct Examination.

By Mr. McKinley: Q State whether in the district which you have charge of as zanjero, whether you deliver any water to any associations or corporations other than the Upland Water Company, as to which you have already testified, for domestic purposes?

A I deliver for the San Antonio Heights Pressure System.

Q What amount of stock do you deliver water on to that system?

A About 30 shares.

Q What are the domestic uses that they make of it?

A They use it for domestic purposes, for their dwellings.

Q Do you know how large a number of connections they have on that system through which they deliver -- that is, taps?

A They have three-quarter connections.

Q No. I don't mean as to the size of the connections, but how many?

A Oh, about 20.

Q How much territory do they cover?

A Oh, it covers over probably -- the houses are very scattered; it covers over probably 50 or 75 acres, the whole thing.

Q In what way do they use the water for domestic uses? That is, for houses and gardens -- and lawns?

A Houses and gardens and some have orange trees on their lots; it is subdivided into lots -- acre lots.

Q Are any of those included in your estimate of acreage?

A No, sir.

Q How long have you been delivering this water on this stock?

A I think 7 or 8 years since we have been delivering it. You asked me the question -- There was a number of other little ones. The San Antonio hospital has a pressure pipe that I deliver them to -- about on two shares.

Q What use do they make of it on the Hospital. Have they any grounds?

A Nothing but a lawn. And another little system that about seven families use water out of, that I deliver water to.

Q What is that system?

A Well, just some private residences, have a private pipe attached, and it is San Antonio stock that is turned in there.

Q How much stock have they got?

A About 2½ shares. It is also San Antonio stock that is turned into the San Antonio Heights system.

Q Is that all of the systems?

A Yes, sir; except what I stated yesterday -- the Citizens Land and Water Company of Upland.

Q I think you stated how many shares they had.

A Yes, sir.

Q Now, do all these parties take all the water they would be entitled to under their shares?

A Yes, sir.

CROSS EXAMINATION.

By Mr. Britt: Q Do they all use the water? Or do they sell it, or some part of it, to other people?

A I didn't catch the question.

Q Do these several systems all use the water themselves or sell it to other people?

A They all use it.

Mr. Haskell: Q Are these 30 shares of water used at San Antonio Heights, 22 shares of water used by the San Antonio Hospital, and the shares of water used by the Citizens Water Company of Upland, included in the 6,000 shares of stock to which water is distributed that has been testified to?

A Yes, sir.

Q Those shares of stock used in this way simply take their proportion of the total amount of 900 inches of water which these witnesses have claimed to be necessary and which you state was required there?

A I don't know as it is included in the 900 inches.

Q Well, it takes its share of thewater out of the whole does it?

A Those shares are set aside, and then we make an estimate of so much for the irrigators outside of the private needs.

Q Well, there is only 6,000 shares of stock in all?

A That is all.

Q And each share gets its proportionate part of the whole?

A Yes, sir.

-o-

C. H. DYER.

C. H. Dyer, previously sworn, recalled by defendants, testified as follows.

Direct Examination:

By Mr. McKinley: Q Will you state to what domestic systems you have delivered water, and did, up to the time you went out, in your district?

A To the town of Ontario I delivered in 1907, 34 inches.

Q On 240 shares?

A Yes, sir, on 240 shares. Stowell Subdivision 2 inches on 20 shares. Kinsell line, 5 inches. San Antonio line, 5 inches.

Q Well, statehow much stock each time.

A On the Kinsell and San Antonio lines, they were furnished from Ontario Power stock -- Ontario Power stock and water; and they had full charge of the lines; it required 5 inches of water to keep them filled. Cemetery line, 2 inches on 20 shares.

Q On San Antonio Water stock?

A Yes. Tenth Street system, 1 inch on 10 shares, San Antonio Water stock.

Q Referring to that delivered on Ontario Power Company stock upon what basis is that delivered? That is, does it rest on San Antonio Water Company's stock,or what does it rest on?

A Yes, sir; the San Antonio Water stock that year.

Q With reference to those deliveries of water, what use is made by the parties receiving them, of the water?

A Used for domestic purposes, and irrigating front yards

and gardens and so forth.

Q Are any of those included within youracreage estimate?

A No, sir.

Cross Examination.

By Mr. Britt: Q Do you mean those are not included in the estimate of 4667 acres in the Ontario Colony?

A No, sir.

Q Are those outside the colony?

A No, sir, they are within the Colony. But the water is not used for irrigating citrus fruits; simply for the front yards and domestic purposes. Then besides this, are all the individual attachments to the differe t lines. These are simply the different systems of pressure water.

Q Those were-- those ~~were~~ deliveries were made by the Ontario Power Company?

A Yes, sir.

Q All of them?

A Yes, sir.

Q You mentioned yesterday that the San Antonio Water Company could not deliver for domestic purposes; for what reason?

A For the reason that they are a mutual benefit association, and are not able to buy or sell anything for profit, and that the stock was supposed to cover proportionately all water in hand, and it was not fair to give one man the amount of water which he was entitled to for 10 shares of stock, without domestic water, and another man his 10 shares of stock, with domestic water; and the domestic water was such a small amount that it was not practical to deduct it

from the man's run who really lived on his ranch; so that for years it was a problem how to adjust that matter until the Power Company came into existence and procured water which they could buy and sell to consumers.

Q Do you mean the Ontario Power Company?

A The Ontario Power Company.

Mr. Haskell: Q Do you mean to be under tood as saying that none of this water delivered for domestic use is delivered to persons living on any of this 4667 acres?

A No, sir; I simply mean that it is not used for irrigating the orchards.

Q But it is delivered to persons who own the orchards and living on the orchards?

A Yes, sir, living on the orchards?

Q And then this additional supply, in addition to that which they irrigate the orchard with, they had an additional supply, delivered in this way which you have illustrated?

A Yes, sir.

Q For domestic use and for irrigating their lawn?

A Yes, sir; and they pay for that water -- pay the Ontario Power Company for that water.

Q And it is all included in this 6,000 shares of stock?

A Yes, sir.

Re-Direct Examination.

By Mr. McKinley: Q Do I understand all this water you have testified to now, other than the City water, is delivered on stock of the San Antonio Water Company held by the Ontario Power Company?

A That season it was; yes, sir.

Q With reference to the City of Ontario, to what uses is the water distributed by it, to what domestic uses?

A For household use and for stock, and for irrigating lawns, and what orchards -- what trees are planted on the lots.

Q Do you know about what acreage is covered by that system?

A 40 acres -- no, 160 acres; a quarter of a section.

Q Do you mean the system covers that, or that is what that amount of stock covers?

A The system.

Q The system covers about 160 acres?

A 160 acres.

Re-Cross Examination.

By Mr. Haskell: Q Is this 160 acres all planted and in use?

A It is the town -- the city part of Ontario; it is divided into town lots. The original town was a mile square. The central portion of it, one-fourth of it, was divided into town lots, and three-fourths into villa lots; and this system covers the town lots.

Q It does not cover the villa lo ts?

A No, sir.

Mr. McKinley: Q Do you know how much the Upland system covers?

A I can't tell exactly now.

By Mr. Britt: Q You mentioned again the stock held by the Ontario Power Company in the San Antonio Water Company?

A Yes, sir.

Q Was that the 54-1/3 shares of stock which were issued by the San Antonio Water Company to the Ontario Power Company some five or six years ago?

A I can't tell you; it has been a year since I have had my list. I derived my information from the list furnished me from the office that year, and just the amount of stock which they held then I can't tell you.

Q Do you know how much water you received on the stock of the San Antonio Water Company held by the Ontario Power Company?

A I don't know how much stock they held. I don't think they used all the stock they held that year on these different systems.

Q My inquiry was, do you know how much water they received on that stock?

A No, I don't know.

Q Do you know how much water you delivered on that stock?

A No, I can't tell you that from my present information.

Q Didn't you keep a note or minute of the quantities of water which you were delivering upon the several holdings of stock?

A I knew what I was turning into the different systems, and took care that I did not turn in more than the Power Company owned. But besides the stock which the Power Company owned they had water of their own which they can sell, as well, not covered by any stock whatever.

Mr. Haskell: I move to strike that out as a conclusion of the witness.

The Court: As to what part of it?

Mr. Haskell: As to what he says about the Power Company having water of its own that they can sell.

(Answer of witness read).

Mr. Haskell: And also on the ground that it is not responsive to the question.

The Court: Strike out that answer, and let the witness answer the question again.

(Last question read by reporter).

A No.

Mr. Britt: Q It was a part of your answer which was stricken out that you were careful not to deliver more water on the Ontario Power Company's stock than it was entitled to?

A Yes, sir.

Q How did you know when you got up to the limit?

A Well, I had a list in my possession furnished me by the office, being the amount of stock which each stockholder held, and upon which they were entitled to the use of water, and that was my list from which I made the distribution of the water during the season.

By the Court: Q When you speak of what parties were entitled to, you mean that you took this list which you received from the office as your guide?

A Yes, sir.

Mr. Britt: Q And you can't state now from memory what quantities were apportioned on Ontario Power Company's stock?

A No, sir.

Q At what point did you deliver the water which was apportionable on the stock held by the Ontario Power Company in the San Antonio Water Company? Where did you deliver that water?

A Well, at the head of these different systems; we had weirs where we furnished the water to the systems, and when the water dropped over the weir into the system my part of the work was finished.

Q That is to say when you turned water over the weir to the City of Ontario, you called that Ontario Power Company's water did you?

Mr McKinley: He has not stated that was Ontario Power Company's water; we object to that assuming that it was Ontario Power Company's stock; the testimony is all to the effect that it was delivered under San Antonio Water Company stock.

Mr Britt: The witness says that there was no certain place where the delivery of water to the Ontario Power Company as such was made, but he turned their water to the different systems, and I am merely inquiring of him whether the City of Ontario was one of those.

The Court: I see no objection to that inquiry.

A I don't remember that the Ontario Town rented any water from the Power Company; it may have done so during that season; and if it did I turned it in; they have rented water from the Ontario Power Company at times.

Q You mentioned another system, the San Antonio Heights system: how you turned water into that concern?

A Yes, sir. That is Mr Fuller's portion and I think the parties there own their own stock.

Q Well, into what other systems did you turn Ontario Power Company water?

A The Finsell system.

Q How much?

A Five inches.

Q Proceed.

A San Antonio system, five inches; and a portion of the Cemetery line and 10th street system; they come all under the head of water owned by the Ontario Power Company. Whether that would be covered all by the stock of the Ontario Power Company or not, now I am not able to state.

Q Altogether that would be some 12 inches?

A Yes, sir.

Q Was that all the Ontario Power Company water that you delivered?

A No, sir; the water that was furnished to the different individuals came also from their fund.

Q Then there was no place where you delivered water to the Ontario Power Company as such, but when you delivered to the various consumers or associations of consumers you counted that as Ontario Power Company water?

A Yes, sir; that is the system on which we worked.

-o-

F. A. Trask

F. A. Trask, a witness called by defendants, previously sworn, testified as follows:

Direct Examination.

Mr McKinley: What is your profession?

A. Civil engineer.

The Court: I think his qualifications were given when he was on the stand before.

Mr McKinley: No, Your Honor; they put him on the stand and simply asked him questions.

Mr Britt: His qualifications are admitted. We admit his qualifications and his competence to express opinions on matters within the scope of his business as a civil engineer, and as a hydraulic engineer.

The Court: Reserving the right I suppose to question the validity of those opinions.

Mr Britt: We admit his qualifications to express those opinions; the weight of them is a different proposition.

Mr McFinley: Does everybody else admit them?

Mr Donner: We do.

Mr Bedell: I think so.

The Court: The stipulation that was made as to objections and exceptions applying to all the plaintiffs, perhaps would not extend to stipulations.

Mr McKinley, Q. How long have you been acquainted with the territory upon which these developments and the waters claimed by the plaintiffs, and the waters claimed by the defendants are situated?

A. Twenty-one or twenty-two years.

Q What has been your connection with that in a professional way, in the way of becoming thoroughly acquainted with them?

A I went to Ontario in the latter part of 1887, and assumed the position of chief engineer of the old holding company, known as the Ontario Land and Improvement Company of Ontario, and that company at that time controlled the majority of the stock of the San Antonio Water Company, and was in fact the promoting company, and had control of the water developments both of its own and of the San Antonio Water Company, and as their engineer I had charge of all those water developments, and of their properties generally, and it became my duty to look after the developments which they were carrying on in the San Antonio Canyon, and to ascertain what other possible sources existed for water development, and in those early years I took up the study of the Chanonga Red Hill Section and enquired into its water development possibilities and probabilities, and from that day to the present I have had largely to do with the work that has been performed there by this company, and have had an opportunity to watch the developments by other interests in and about that section.

Q And have you watched them?

A I have so done.

Q How thorough has that observation been? How regular and often?

A Well, with the exception of the time between the dates of October 9, 1890 (1900: see correction later) and sometime in the latter part of the summer of 1902, I had nothing to do whatever with any of the works of the San Antonio Water Company; that was 1900 instead of 1890 if the reporter will

make the correction; a little over a year; with that exception I have frequently been over this territory each year, and some of the years I have spent a number of days each month in connection with the developments; at all times I have been thoroughly familiar with the whole section of country there under discussion in this case.

Q What have you done in the way of making observations and ascertaining its character?

A The first observations made by me in and about the Red Hill were back in the first two or three years of my residence at Ontario; at that time it became evident that the supply of water from the San Antonio Canyon and San Antonio tunnel would be insufficient for the needs of the Ontario Colony, and at my request the - -

Mr Britt: The statement of the witness as to what became evident is not responsive to the question and we ask that it be stricken out.

Mr Mc. Kinley: Very well; we have no objection.

The Court: That will be stricken out.

Q Well, go on and state what you did; state what things you did, not specifically describing the day's work but generally.

A In the years 1888 and 1889 I made a thorough study of the Red Hill section and advised the Ontario - -

Q Better not state what you advised: how did you make that study?

A I examined into the water developments that existed in and around the Red Hills that were made, and had been made, and were being made at the time by the owners of lands

in and about there representing Cucamonga interests.

Q How did you make that examination,- what did you do in order to make it?

A I went over the ground and examined the water developments that existed; and went over the ground and studied the geology and topography, and studied the drainage area lying to the north, from which the supply of waters must come, and secured permission to put down shafts and demonstrate conclusions which I had drawn as the result of my study.

Q Did you put down shafts?

A Those shafts were put down; there were three shafts put down; the first one put down is known in the record here as 16th street well number 3, and is the old original development of the Ontario people in the Red Hill district; it was put down as a shaft, originally, down to the water, and the bottom was carried down as far as men could go with rubber boots; and then later, I think approximately at the location of the present well number 2 of the 16th street wells, a shaft was put down; and at a somewhat later date, and in line with my desire to develop the possibilities in that basin, I put down a shaft up in the Cucamonga Canyon near the northeast corner of the Ontario Colony lands; that is, up in that section of the colony lands and in the main wash of the Cucamonga Canyon; the shaft has been referred to here by some of the other witnesses as a shaft into which flood waters have been poured; that shaft was put down into the gravels and the water conditions were developed at that time.

Mr Britt, Q Let me ask you to specify again where that shaft you mentioned last was situated?

A I cannot state accurately the precise location of that shaft, but my best judgment is that it is between 25th and 26th streets and near the center of Section 20, Township 1 north, range 7 west, --probably west somewhat from the center of the section. That would be the best location that I can possibly make without making a survey of it on the ground.

The Court: I don't quite understand the relation of that point to the wells.

A The 16th street wells are in sections 32 and 33.

Q Then it is about how far northwesterly from the well?

A About 1-5/8 miles. From 1½ to 1¾ miles. Somewhere between those limits. Yes, it is nearly two miles. Probably a little in excess of two miles, the 16th Street wells being in the southern quarter of sections 32 and 33, township 1 north, range 7 west, and the point above described as Canyon and Cucamonga wash, is near the center of section 20 in said township and range.

Mr. McKinley: Q What else have you done in that country all these years in the way of getting acquainted with it and familiarizing yourself with it?

A Some years later, I think it was in 1900, no, 1890, I put down still another shaft just north of 16th Street and from 3/4 to 7/8 of a mile east of Euclid Avenue. Some two or three years later I had charge of the engineering features of the construction of the Franksih and Stamm tunnel. That tunnel is located in the Cucamonga Canyon debris cone and 500 to 1,000 feet west of the westerly bank of the Cucamonga flood channel or wash, and extends from a point 4 or 5

hundred feet south of 23rd Street, northerly to a point 4 or 5 hundred feet north of 26th Street. It has an approximate length of 6,000 feet. I think at its upper end it is something like 320 feet below the surface of the soil at that point.

Q How closely did you observe the progress of that tunnel?

A I was there on the work 2 or 3 times a week during the period of its construction, and observed the formation and the character of the material through which it passed, and the developments as regards the water.

The Court: Pardmon the suggestion. I think you will probably aid the understanding of the testimony by marking on the map the experimental shafts 1, 2 and so on.

Mr. McKinley: Yes. Mark it on the map if you can, on Exhibit D.

A On Defendants' Exhibit D, experimental shaft No.1 is the location of the present 16th Street well, and marked on this map as "16th Street well No. 3."

Q Where there is something by which you can designate it, it is not necessary to make additional marks. The others, where there is no marks designating them, put a mark on.

A Experimental shaft No.2 is at or near the point of the present location of well No.2 of the 16th Street wells, and is marked on the exhibit above designated as such experimental shaft No.3. I have marked with a pencil in the shape of an O, with an X over the O, and it is located below, about a quarter of an inch, the capital letter S in the word sec, and I wrote the legend "Exp" for experimental, the word "shaft" and "3."

No. 4 is located a short distance north of 16th street, and about 3/4 or 7/8 of a mile east of Euclid Avenue.. It is designated by a small circle and a cross over it, and the legend "exp" for experimental, the word "shaft" and "#4."

The Court: As I understand, you have numbered these shafts chronologically, beginning with the first in the point of time.

A Yes, that is correct, as I recollect the method that we put them down. I may be wrong but I think I am not. That is my recollection of the order in which I sunk them.

Mr. Haskell: Q And the Frankish and Stark tunnel?

A The Frankish and Stark tunnel is represented on this map at the point I have heretofore described, and it is marked F & S tunnel, and the location of it is shown on the map by two parallel dotted lines. It lays in the west half of section 29 and section 20, township 1 north, range 7 west.

The Court: Q What is the length of the tunnel?

A Approximately 6000 feet. I think within a very few feet of it.

Mr. McKinley: Q Proceed and state what other things you have done to familiarize yourself with that country, Mr. Trask.

A The rest of my work in connection with the developments in and around that country have been in connection with the laying of pipe lines and the putting in of meas ring boxes, bulkheads, bulkheading tunnels, and watching the developments of the walls that have been bored from time to time in

the years subsequent to the work I did in connection with the Frankish and Stann tunnel. And with the exception of the one and a fraction years I have referred to as having been away from Ontario and out of the employ of the company, I have each year had opportunity to make water measurements and examine the work that has been going on from time to time.

Q. Have you had occasion to examine the country and get acquainted with it for the purpose of testifying in other cases as an expert?

A. In the years 1899 and 1900 I was connected as the Company's engineer with the preparation of data relative to the litigation over the title to the waters which the Ontario people were taking from the Red Hills.

The Court: Q. You refer to the McPherson suit?

A. Yes, sir.

Mr. McKinley: Q. How far did you go into the subject at that time in your investigations?

A. I went carefully into the available records and information that I had accumulated, and spent considerable time on the ground in making surveys, profiles and plats which later appeared in the case known as the McPherson case, and testified therein.

Q. Speaking of the Frankish & Stann tunnel, what years was that run in?

A. I think I had better look at my notes for that.

Q. All right. Look at your memoranda.

A. I will have to do that this afternoon. I have it in the hotel. I think I have the exact date of that.

Q. Will you proceed and take those maps and make explanation of everything which relates to the case on them, pointing out such matters as bear on these questions? And you may, incidentally with the map, explain the character of the country and so on generally.

A. This map, defendants' Exhibit D was prepared from records of surveys which I have made from time to time during my residence in Ontario, and practised there as engineer, and from other records and data that have come into my possession at different times, some of them during the trial of the different cases and so forth. It shows the outline of the Ontario Colony Lands.

Q. You have checked up the data that you have received to determine whether it is correct or not?

A. Yes, sir; it is correct to the best of my knowledge and belief. I colored the Ontario Colony -- the original lands -- with green, and they are shown on this map in green; the purchases made by the Ontario Power Company and the San Antonio Water Company of lands lying easterly of the original Colony lands, are shown --

Q. I think you defined those colors before.

A. Yes. They are shown by several colors. The present holdings of the Ontario Power Company, of both the Ontario Colony lands and the lands purchased by them to the east are included within the green area, but I have had to put on this map a yellow border, segregating these lands from the other holdings of lands in the Ontario Colony, the purpose being to show the exact lands owned and controlled by the Ontario Power Company. And within this designated

border the words "Ontario Power Company" are written.

Mr. Britt: Q. Within the yellow border?

A. Yes, sir; within the yellow border, at the west, south and north. The ~~six~~ lines carrying the water from the 16th Street wells, one of them is shown on this map, and it is shown as a diagonal line through the Colony lands from the point near the south-west corner of the land owned by the San Antonio Water Company north of 16th Street, in sections 32 and 33, township 1 north, range 7 west, and is marked 20-inch main pipe line, at or near the south-west corner of the San Antonio Water Company's 16th Street wells. The main continuance easterly and through this land as far east as the Stowell wells-- as far east as the Haskell wells or wells Nos. 7 and 8 of the 16th Street wells. And the line is somewhat south of wells 1 to 5, and water from each of those wells is brought in by a short connecting line. The water from the Radio tunnel, which is the tunnel in the 90-acre tract and crossing the 95-acre tract, is taken through two pipe lines. The original pipe line was a 22-inch main pipe line leading from the mouth of the tunnel southwesterly through the Colony lands, and during the period of my absence from Ontario a 30-inch line was put in supplementing the original line. This map also shows that part of the Ontario Colony lands lying within the Rancho Cucamonga.

Q. What portion of the Ontario Colony lands do lie within the Rancho Cucamonga? I mean the description on the map.

A. It shows the relative location. The acreage is not on the map.

Q. I haven't asked you for the acreage yet. I am going to,

but I want the description on the map.

A All of the Colony as shown on this map and colored green, lying north of 11th Street, is within the Cucamonga grant.

The Court: Q Let me ask you; does the westerly line indicated by the green lands -- is that the westerly boundary of the Cucamonga Ranch?

A It is, north of 11th Street; and the station numbers of the Cucamonga Ranch begin at the township corner of Townships one and two north, ranges 6 and 7 west, and is marked Station 1, and the survey was to the west, north, west, north, and then easterly along the north line of the Cucamonga grant. It is the north line of the Ontario Colony lands.

Q All those lands, the uncolored lands to the east, are part of the Cucamonga Ranch?

A All the lands included in the hatching, and around which a line is drawn with the station numbers, are within the Cucamonga grant.

Q Does that line of hatching indicate the exterior boundary of the Cucamonga Ranch?

A Yes, that is correct; and each angle is a station numbered as in the Cucamonga grant.

Q I had an idea it extended further eastward.

A This is correct. It is taken from the abstract of title by myself.

Mr. McKinley: That is within the boundary of the Cucamonga Ranch?

A Yes, complete on this map. This map also shows the tunnels, location of the Sunset Water Company in Section 34, and also the Lone Star Tunnel No. 1 in Section 34, Township

1 1 north, Range 7 west. It also shows the location of the
2 Lone Star Tunnel No. 2, which is started insection 3, town-
3 ship 1 south, range 7 west, and runs north into section 34,
4 above described. It also shows the location of the Y Tun-
5 nel in Section 4, township 1 south, 7 west, and shows the
6 general location of the Cucamonga flood channel from the north
7 line of the ranch southeasterly through the Red Hill sec-
8 tion, Section 4 above described, down past the bridge near
9 the winery, in the southern part of section 4 above described.
10 Q Are there any other flood channels there?
11 A This flood channel is only one of the various flood
12 channels and later on in another map, I will be able to
13 show numerous flood channels on the Cucamonga debris cone,
14 some of them several miles west of this.
15 Q What is the area of the Ontario Colony Lands included
16 within the Rancho Cucamonga?
17 A There are 5966 acres of Cucamonga Rancho in the Ontario
18 Colony Lands.
19 Q That is, the Ontario Colony Lands cover that much of
20 the Rancho?
21 A Yes, sir.
22 The Court: Q What is the acreage of the Cucamonga Ranch?
23 A 13,355 acres. That is, (referring to the 5966 acres)
24 within the Old Colony Lands, and exclusive of the recent
25 purchases.
26 Mr. McKinley: Q Will you describe on the map the portion
27 of the lands shown on it which are covered by the distribut-
28 ing system of the San Antonio Water Company.
29 The Court: Before he starts in on that, I would like to

ask if this acreage that he gave, which he says is exclusive of the recent purchases, -- I would like to know the acreage of the recent purchases approximately.

A I will give them seriatim.

Mr. Stephens: And by whom, Mr. Trask?

A The tract of land on which the S twowell wells are located, there are 262 acres.

Mr. Britt: Q By whom purchased? Which Company?

A The lots number 4 in section 9, and 1,2,3,4 in section 8 --

Mr. McKinley: Q What are you referring to? Purchased from whom?

A Those purchases have come -- some of them came at the time ~~that~~ with the Power Company. The Power Company owned them. When the Power Company's property was turned over to the San Antonio Company. I don't know the dates. I simply know that they had possession of the lands. I can't give the dates of the purchase.

Q What land is it? Show us on the map.

A I will have to have the Cucamonga Homestead Association map here for some of these figures, and the Cucamonga Fruit Land Map. I think Mr. Wright could probably locate that better than I could. I have a description of part of it here. I will read it into the record if you wish. "Lots No. 4, section 9, and 1, 2, 3, 4 Section 8.

Q Those are owned by the Ontario Power Company?

A Yes, sir. Also Block 20 of the Cucamonga Homestead Association. About 140 acres. The Rubio Ranch. The Company has since sold the 41 acres of the surface. They

purchased 58 acres originally, and have the water rights in the acreage sold, and I have marked it and designated the tract with a blue line around it for the purpose of distinguishing it from lands that they owned.

Mr. Stephens: Was that the piece they sold subject to a reservation of the water rights -- the piece with the blue around it?

A Yes, sir, that is San Antonio Water Company land too, rather than Ontario Power Company.

Q That is not the whole Rubio place?

A No, sir. They sold forty-one or two acres out of the 58.

The Court: Q Reserving all the water?

A Yes, sir. Then the Keller ranch, about 40 acres, that is San Antonio Water Company property?

The Court: Q Indicate it on the map.

A That is shown in the southeast corner of section 33.

The Court: Does it include all that rectangular piece?

A No, part of that is the Haskell property. The property covered by the green with the red border around it, contains the old Haskell property which I think was 20 acres., and the Keller property, 40 acres, lies immediately north of it, making 60 acres in that tract, and it is made up as I have designated it, of those two purchases. Making a total of 620 acres that is in the Cucamonga Rancho, and added to the original area of the Ontario Colony Lands, making a total of 6600 acres.

Mr. McKinley: Q Which amount is the Colony Lands --

A The Colony lands plus recent purchases of the Ontario Power Company and the San Antonio Water Company within the Cucamonga Grant.

and the balance of the Ontario Colony, which is the original Colony lands, about 6560 acres; or adding the 620 acres to the original area of 5965 acres, to the area of the Ontario Colony Lands lying south of the ranch, 6560 acres. It makes the total holdings of the Colony or in the Colony as it now stands, 13,145 acres. That includes the water-bearing lands and the area through which that water is used for irrigation purposes.

Q. These railroad tracks here are shown in the proper place?

A. The three trans-continental lines pass through the Colony, and are shown correctly. The Santa Fe is half way between 6th and 7th streets, where it crosses Euclid Avenue. The Southern Pacific is about an eighth of an mile south of A Street in the town of Ontario. The Salt Lake Railway is some four or five hundred feet further south. And each line passes in an easterly and westerly direction through the Colony.

Q. Now, willl you show on the map the portion of these lands which are under the distributing system of the San Antonio Water Company?

A. South of the Santa Fe Railway the San Antonio Water Company has a system of lateral pipe lines running north and south a distance of an eight of a mile apart along the lot lines of the 10-acre subdivisions into which the Colony is subdivided, running southerly to the south line of the Colony, with the exception that in sections 29 and 30, township 1 south range 7 west. In those sections there are only 2 or 3 lines that run to points where groves are being

irrigated. The easterly parts of section 8, section 17, and section 20 are not completely covered. I can't give from memory the exact area that is covered.

Q You have memoranda from which you can ascertain that?

A I think I have. North of the Santa Fe Railway and for a distance of an eighth of a mile west of Mountain Avenue, as shown on this map, these parallel,lines are run at the specified interval of an eighth of a mile apart throughout the colony from 24th Street south. On the west they are limited ~~on~~ one pipe line an eighth of a mile west of Mountain Avenue. On the east, north of 16th Street and east of Euclid Avenue, there are three pipe lines running north and south through the colony between 24th and 16th Streets. Between the Santa Fe Railway and 16th Street, on the east side of Euclid Avenue, the pipe lines have been increased, (the number of them) on the east so that in places there are three, and the further south you go, the larger the area covered with it, and the pipe lines have been extended, so that I think at once point there are four and possibly five parallel lines an eighth of a mile apart. The system of distribution of Ontario Colony, as I have before stated, is a series of north and south distributing lines of large main pipe lines bringing water from the sources of supply. The pipe lines are shown from the 16th Street wells and Cucamonga tunnel -- the main diagonal lines -- but the water from the San Antonio Canyon and the San Antonio tunnel is brought in through a large ditch, a large cement conduit, around the foot of the hills about a quarter of a mile east of Mountain Avenue and at a point between 25th and 26th

Street, and there it is used for power through a steel pipe line of some 2,000 feet in length; and this pipe line is paralleled by an over-flow line. The water is delivered from the power house into a main which runs in general terms along 24th Street east to about a quarter of a mile east of Euclid Avenue, and that is the main supply main taking water for the laterals on 24th Street and supplying the orange groves lying south of 24th Street throughout the colony.

Mr. McKinley: Q. Whereabouts is that power house?

A. In section 24, township 1 north, range 8 west.

Q. Mark it on the map, will you, as nearly as you can?

A. I have marked a rectangular figure in pencil between 24th and 25th Streets at a point about half way between San Antonio Avenue and Mountain Avenue, and I have written a legend "S.A.Heights Power House." That is approximately the location.

Q. You say there is an over-flow pipe coming down there.

A. The pressure pipe line comes down from the main gravity conduit, around the foot-hills, at a point a little west of north of the power house, and there is a supplemental line from this conduit down to and past the power house, so that the use of the water by the Power Company will not interfere with the irrigation service of the water. The object being to keep the water running at all times. That is, if the Company shuts down its wheels, ~~it~~ goes into the other pipe line and into the measuring-box below.

Q. What becomes of all the water that is used, and the over-flow? In other words, does it all go into the system of the San Antonio Water Company?

A It does during the irrigation season. At other times a large amount is spilled below the power house, and at points east it is spilled into the drainage channels and the gravel beds north of 16th Street, at advantageous points.

Q Does that go into the debris cone, or what becomes ofit

Mr. Britt: That is a matter of ultimate fact to be determined

Mr. McKinley: Not that it goes into the debris cone. As to the effect of it, I suppose Ic ould reach it by an expert opinion, but I don't want to do that now.

Mr. Britt: Q Where is it turned out and distributed?

Mr. McKinely: Yes, where --

A About a quarter of a mile below the power house there is a distributing box. At this box there are several distributing lines leading out, the main line running easterly along or near the line of 24th Street, leaves this box. Another line running down San Atonio Avenue, leaves that box. Another running down one 10-acre distance, an eighth of a mile west of Sa n Antonio Avenue.

Q Will you designate it?

A I have marked a square in pencil in the block bounded by San Antonio Avenue on the east, and 24th Street on the south, and near the south-east corner of said block I have marked a square in pencil and written the designation "Div." for division, and "box" at the point, the approximate location of which is shown there, at which there is a distribution of water into the different pipe lines. At that point at times when the water is not used for irrigation purposes, the waters are allowed, some of them, to run out into a wash which is a natural drainage channel for that

particular area at that point.

The Court: Q Which way does it drain?

A Southerly, in general terms, and when it gets south it turns easterly. The whole trend of the country, when you get off of the foot-hills, is southeasterly. I will show that later with a topographical map which I have.

Mr. McKinley: Q What becomes of the other water that is not permitted to go there?

A The pipe lines carry it easterly. A portion of that water is carried east through the main pipe line along 24th Street, and portions of it are ~~spilled~~ split up and turned down the parrallel distributing lines that are one-eighth of a mile apart. Some of it is carried as far east as a quarter of a mile east of Euclid Avenue, and it is run down the lateral pipe lines and at different points spilled out into the gutter, especially along Euclid Avenue, and taken up again by the drainage gutter on 19th Street, which intercepts all waters both flood and irrigation, that are spilled out above that street, and directs the same easterly into the washes of the Cucamonga debris cone. Those are the two principal points south of the measuring-box at which the flood waters or the surplus waters during the non-irrigation season that are used for power purposes in the power house, are distributed in the gravel bed.

Q The measuring of the water of the San Antonio Canyon has been under your direction during your service as engineer

A Yes, sir. The waters of the San Antonio Creek are measured at what is known as the division dam. It is a point some three-quarters of a mile north of the Colony

lands and within the confines of the San Antonio Canyon. It is the point where the water has been measured for a great many years,-- and where the waters have been divided between the Ontario and Pomona consumers.

Q What has been the division there? An equal division?

A Formerly --

Q I am asking for the practice, and not what either of these is entitled to.

A Formerly the division was equal between the Pomona or west side users and the Ontario or east side users. In the year '96, or '97, the San Antonio Water Company acquired excess and additional rights which have given the Ontario Colony more than half of the water in these later years.

Q How much more?

A It has varied from time to time.

Q How have you determined it?

A It has been determined by purchase.

Q I mean how do you determine the actual division?

A We determine the actual division by measuring weirs placed in the canyon.

The Court: I suppose these original purchases change the proportion simply?

A Originally they were one to one. There were two purchases made the same year. One was of the third supply of water which was a priority in the canyon and was above the point of division. That was purchased by the San Antonio Water Company, and it was a flat amount of 20 inches, and is a prior claim on the water supply, and it had to be taken out before the division was made. The purchase from

the Pomona Land and Water Company of their interests consisted of purchasing all the waters that they had a right and title in at that time. That is, the Pomona Land and Water Company had contracted to supply its stockholders or other parties interested in the San Antonio Canyon waters, with 312 inches of water whenever the water at the division dam (and during those years that was below the point of diversion of the Gird water) whenever the water at the division dam was 624 inches or more. Whenever the water was 624 inches or less the water was divided equally.

Mr. McKinley: Q After taking out the 20 inches?

A The 20 inches was used on land above, up to the time of the purchase, so that there was no record made at the division dam of that prior to the purchase by the San Antonio Water Company. The result was that the Pomona Land and Water Company had excess rights only when there was over 624 inches. And those rights to the flood or excess waters over 312 inches whenever there was over 624 inches at the dvsion dam at that time were purchased by the San Antonio Water Company together with lands within the San Antonio Canyon. So that the amount of water that the Ontario people got -- the San Antonio Water Company -- for a number of years from that canyon, varied from time to time. When the water was less than 624 inches, it was always 20 inches plus one-half of the balance.

Q How long since the Gird flow was acquired?

A The Gird water and the Pomona rights were acquired I thinkin the spring of 1897. That is my recollection. If I am incorrect, I will ascertain later.

Q The mode of division has been as you have stated ever since?

A For a number of years that was the mode of division. When the Ontario Power Company put in the plant known as the Ontario Electric Development or Electric Power Development, and developed the water power of the San Antonio Canyon with their power house located very near the division dam, they introduced a new factor in the division of water.

Q When was that?

A That plant was ~~put in~~ in 1902, and the waters were turned through that plant about Christmas of 1902, if I remember right, or 1903.

Q Since that, how has the division been made?

A Since that date, the first water that has -- the prior right has been the 20 inches of Gird water. The Ontario Power Company have taken the salvage which was the result of the saving made by them in their piping of the waters for 3½ miles in the canyon, which salvage amounted to 19% as determined by the engineers, although the exact amount is still indebate. That is, it is open for the consideration of the courts of Los Angeles.

Q Any litigation on that ~~xxxxxx~~ subject?

A Yes, sir. The cause was litigated, and the Supreme Court determined that the salvage existed --

Q We needn't go into that. My purpose is to show just what we actually got.

Mr. Haskell: Q What did you say the percentage of salvage was?

A The engineers determined 19%. The lower court said --

The Court: Let's have it. It won't do us lawyers any harm to learn a little law.

A The court said that there was not sufficient data for specifying that as the exact percentage. The higher court said that the percentage of salvage existed and that the lower court must determine that amount, and the determination of the exact percentage will be taken up about the 3rd. of May.

The Court: Q What is the title of that case?

A Pomona Land and Water Company and a number of plaintiffs against the Ontario Power Company and San Antonio Water Company.

Here the Court takes a recess until 2 o'clock p.m.

Afternoon Session: 2 p. m.

Mr Stevens: We will stipulate that at a meeting held on March First, 1900, A. W. Hellman, C. W. Childs, I. W. Hellman J. Downey Harvey and Max Meyberg were elected directors of the Cucamonga Land and Irrigation Company; and so far as I know there has been no meeting since then.

C. W. Childs was elected Secretary, I. W. Hellman, President and Max Meyberg, vice-president.

-o-

F E TRASK

F E Trask, recalled for Defendants, testified as follows:

Direct Examination, Resumed.

Mr McKinley, Q At the time we adjourned you were stating as to the division of water as between the San Antonio Water Company and the Pomona Company: had you completed your statement about that?

A No; my recollection is that I brought the details and methods for the distribution or division of the water down to the date of our beneficial use of the salvage and saving of it by the Ontario Power Company. Since the construction of the conduit of the Power Company we have taken first from that supply of water the nineteen percent which we estimated as the proper average salvage, and that has been the first deduction we have made from the total flow of water at the division dam; after the nineteen percent has been taken out we have taken out the Gird water; and then when the flow was 624 inches,- that is the balance of the water, after taking the deductions of the salvage and the Gird water -

when the water was in excess of the 624 inches, we have given to the Pomona people 312 inches, and taken the balance.

Q Does that cover all water received from the San Antonio?

A That is all the surface waters which I am describing now.

Q You have stated where that water is measured?

A Yes, sir; the same point of division.

Q In addition to that there is San Antonio tunnel water?

A Yes, sir; I am not quite through with this yet.

Q All right; go ahead.

A Now, at times when the water left, after deducting the nineteen percent and the 20 inches of Gird water- and by the way the 20 inches of Gird Water by the decision of the Court was reduced from 20 to 18 inches, and since that decision in the lower Court we have deducted as Gird water 18 inches instead of 20.-

Q About how long ago was that?

A Well, I think for the season of 1906 we made that deduction; whether we did for 1905 or not I don't remember. After those deductions, whenever the water is 624 inches or less, then it is divided equally, that remainder, after the diversion of the 19 percent and the Gird water, between the Pomona and the Ontario systems. The San Antonio Company and the Ontario Power Company get together all the creek waters excepting 312 inches, whenever the remainder is 624 inches or more.

Q What does the Ontario Power Company take out of that? Simply the salvage of nineteen percent?

when the water was in excess of the 100 inches, we have given to the Tucson people all water, and leave the Yuma area.

Q. Does that cover all water resulting from the Roosevelt?

A. That is all the surface water which I am describing now.

Q. You have stated since that water is measured

A. Yes, sir; the same point of diversion.

Q. In addition to that there is the Gadsden Canal water?

A. Yes, sir; I am not quite through with that yet.

Q. All right; go ahead.

A. Now, at times when the water left, after delivering the minimum pressure and the 20 inches of that water- and by the way the 20 inches of that water by the minimum of the Yuma was reduced from 22 to 21 inches, and since that minimum in the lower Yuma to have delivered in that water 21 inches instead of 22.

Q. About how long ago was that?

A. Well, I think for the season of 1921 we made that depletion; starting on the 15th of May I think somewhere after three thousand, measuring the water in 200 inches on June, then it is divided equally, that remainder, after the diversion of the 21 percent and the Gila water, between the Yuma and the Imperial system. The Yuma Imperial Company and the Imperial Irrigation Company and together all the users have accepting 21 inches, measuring the remainder in the inches or more.

Q. Then does the Imperial Irrigation Company take out of Lake Mohegan the amount of water required?

A. They acquired the salvage by virtue of their improvements.

Q. What disposition is made of that water as to use?

A. It goes into the system of the San Antonio Water Company and by some arrangement between the two companies is put to beneficial purposes.

Q. Then there is water from another source from the San Antonio region, as I understand it from a tunnel?

A. There is.

Q. Will you describe just what that is, and what the San Antonio Company has there in the way of a tunnel?

A. There is a tunnel in the San Antonio Canyon, designated the San Antonio tunnel; the tunnel is driven from a point in the northeast quarter of section 24, township 1 north, range 2 west, northerly into the canyon; the work was begun back in the 80's, in that tunnel, and I finished it myself in the 90's; and it has a total length for the main tunnel of something over 3000 feet, with some gathering channels or branches, and for 600 feet is run in the bedrock in the main axis of the San Antonio Canyon, and in the neighborhood of a quarter of a mile south of the point known as the division dam, where the surface waters are apportioned and distributed. The first official measurements I have of that tunnel were made in 1888, and I think I have made them continuously ever since, with the exception of one and possibly two years; and that source of supply comes into the San Antonio Water Company's pipe line at the mouth of the canyon and is used for both power purposes and for irrigation and domestic purposes and is mingled in that use with the surface

waters of the San Antonio Canyon.

Q Carried through the same pipes to the power house and it is a part of the same water of which you have described the dispostion heretofore?

A Yes, sir.

Q Where is the measurement of that water made?

A There is a weir at the mouth of the tunnel, where a separate and distinct measurement is made of the output of the tunnel.

Q Now, with regard to the other waters brought into the system, where are the measurements made?

A The Frankish and Starm tunnel has supplied more or less water from time to time since its construction, and there is a weir at the mouth of the tunnel over which that water has been measured, and some records have been kept. The water from the 16th street wells has been measured at one common point, or one point where all of the waters have flowed through one weir.

Q Where is that point?

A That point is in the northern part of section 5, township 1 south, range 7 west, a short distance below 16th street, and about a mile east of Euclid Avenue, and is marked Box C on this map, by a little square designation in the pipe line which conducts the water from these wells westerly through the Colony lands.

Q That weir measure simply the 16th street wells?

A That measures all the pumped water of the San Antonio Water Company from the 16th street wells and the Haskell wells, designated as the 16th street pumped wells.

waters of the San Antonio Canyon.

Q. Carried through the same pipes to the power house and is a part of the same water of which you have described the disposition heretofore?

A. Yes, sir.

Q. Where is the measurement of that water made?

A. There is a weir at the mouth of the tunnel, where a separate and distinct measurement is made of the output of the tunnel.

Q. Now, with regard to the other waters brought into the system, where are the measurements made?

A. The Frankish and Dixon tunnel has supplied more or less water from time to time since its construction, and there is a weir at the mouth of the tunnel over which that water has been measured, and some records have been kept. The water from the Joth street wells has been measured in one common point, or one point where all of the waters have flowed through one weir.

Q. Where is that point?

A. That point is in the northern part of section 2, township 1 south, range 7 west, a short distance below Joth street, and about a mile east of Duarte Avenue, and is marked on this map, by a little square designation on the blue line which conducts the water from these wells westerly through the Colony lands.

Q. That will measure simply the Joth street wells?

A. That measures all the pumped water of the San Antonio Water Company from the Joth street wells and the Duarte wells, designated as the Joth street pumped wells.

Q. Have you any measurement of those supplies separately

A. Each well has its own separate measurement and weir, and individual measurements have been made as a check on the measurement made at the common point.

Q. What other measurements were made of water coming in?

A. The waters from the Eadie tunnel in the early days were measured both at the mouth of the tunnel, through a weir which Mr Stowell had constructed, and a point where the line intersects the East Colony lines,- I mean by the line the pipe line carrying the water from the tunnel to Ontario; there was a measuring box there known as the Stowell box, already referred to in the record in the case; so there was a duplicate measurement made of the waters going to Ontario at that time; at the present time the entire measurement. the complete measurement or record of the tunnel is kept over a weir at the mouth of the tunnel, and that weir is really a double weir in that it is a box with two weirs in it, one measuring the portion to the Cucamonga Water Company and its stockholders, and the other measuring the water going to the San Antonio Water Company and the Ontario Power Company and their stockholders.

(last answer of witness read at request of Court.)

The Court, Q. Do you mean that Stowell ~~xxxx~~ box is not in use at all now?

A. I don't think the weir is in use at the present time; I think the last time I noticed it the weir was knocked out of the box.

Q. How ~~xxxx~~ far is that Stowell box from the mouth of the tunnel approximately?

A.

A I should say i was 2800 to 3000 feet. I want to say in regard to that answer that was read, there is a little ambiguity there, and one or two wordshave been left out; there was, and I intended to say in that answer, there was a measuring weir at the tunnel, and also one at the Colony lines, where the pipe line intersected the Colony lines.

Q You mean at present?

A No, in the first two or three years.

Mr McKinley Q Now, the water from these sources are carried through different pipe lines, h- the water from the 16th street wells, and the water from these tunnels: Just state what pipe lines they are carried through?

A Well, to make that comprehensive I will have to preface my remarks by saying that the irrigation in the upper part of the Colony is wholly and solely from the Canyon and Canyon tunnel supplies in years when that is ample and sufficient; otherwise the other sources, namely the 16th street wells and the Eadie tunnel are drawn on only in part; but as the supply from the canyon decreases it becomes necessary t to supply all the Colony lands and at such times the water is taken in from the 16th street wells and from the Eadie tunnel, supplementing the supply from the north, in order to cover all the lands reached by the pipe system of the San Antonio Water Company; and these same pipes are used for one and all of the supplies, whenever the waters are of sufficient elevation to run into those pipe lines; for instance all the pipe lines in the distributing system may have some water from all of these sources at times.

Q I didn't ask you about the pipe lines in the distributing

[illegible]

system, but the different pipe lines connecting the distributing system with the sources of supply. Just explain what those pipe lines are?

A. Those pipe lines bring the water from the sources of supply to the intersecting and distributing laterals.

Q. Well, tell what pipe lines there are there?

A. Well, I have heretofore said that from the Eadie tunnel there is a 22 inch line which was laid at the time of the original purchase from Stowell of 130 inches, and that later when the Ontario Power Company acquired additional rights and water a supplemental 30 inch pipe line paralleled this first line, covering practically the same territory, and reaching practically the same distributing lines. And the same in part is true of the pipe line conducting the waters of the 16th street wells westerly into the Colony lands; originally the pipe line - the main line is a 20 inch line, but at different times different sized pipes have been laid there, and I think a part of that line is duplicated now, in part.

Q. Now, when these waters are carried from these various sources to the distributing system, state whether all of them are used for the benefit of the stockholders of the San Antonio Water Company?

Mr Britt: That is beyond the scope of this witness's qualifications; I object to the question in this comprehensive way.

Mr Mc Kinley: I withdraw the question.

Q. State whether all of these waters, other than those taken by the Ontario Power Company are distributed to the

stockholders of the San Antonio Water Company?

Mr Britt: That question involves entirely a conclusion of the witness.

Q Has the distribution of the waters been under your direction?

A Not in recent years; and in former years it was in a way, at the time I was Chief Engineer of the company.

Q Whose direction was it under in recent years?

A The board of directors, through their manager, and through the manager the zanjero controls the water; I have nothing to do with its apportionment.

Q Are there any other matters to explain on this map?

A There is nothing further on this that I care to take up.

Q Are you familiar with the division between the Ontario Power Company and the San Antonio Water Company of waters, what disposition is made of the waters by the two companies?

A I am not familiar with the practical method of the distribution as between the two companies; I know what the rights of the companies are as regards the sources, but as regards the practical distribution I don't know.

Q As regards the actual distribution you don't know?

A No, sir.

Q You can proceed and explain the other map, Exhibit E you have here, that is other than you have explained it.

A There are some things that I have not called the attention of the Court to in relation to this map, although some study of it might reveal the facts contained herein. I have located on this map the bulkhead which was constructed in 1907 in the Sadie tunnel, and I have marked

stockholders of the San Antonio Water Company?

Mr Smith: That question involves analysis of the witness.

Q: Was the distribution of the waters been under your direction?

A: Not in recent years; and in former years it was in a way, as the time I was Chief Engineer of the company.

Q: Those directions was it under its proper jurisd

A: The board of directors, through their manager, had charge the manager the engineer controlle its value; I have nothing to do with the apportionment.

Q: Are there any other matters to explain on this map?

A: There is nothing further on this that I care to take up.

Q: Are you familiar with the division between the Alamito Water Company and the San Antonio Water Company of waters, what disposition is made of the waters by the two companies?

A: I am not familiar with the practical method of the distribution as between the two companies; I know what the plants of the companies are to regulate the waters, but as regards the practical distribution I don't know.

Q: Do regard the actual distribution you don't know?

A: No, sir.

Q: You may proceed and explain the other map, Exhibit A you have here, that is other map you have explained it.

A: There are some points that I have not called the attention of the Court to in relation to this map, although some along of it which proved the large evaporated water. I have located on this map the buildings which are numbered as 1 and 2 on the main canal, and I have noted

"Bulkhead 1907" at that point.

Mr Fritt Q Is it marked on the map?

A Yes, sir; it is so marked on the map, on the 90-acre tract. Another matter I wish to call the Court's attention to is that the wells on the property of the San Antonio Water Company and the Ontario Power Company are numbered, and where possible the year when drilled is written near them, and the elevation of the surface of the ground in each one; and that wells of the plaintiffs - in fact the wells of all other companies and individuals that appear here in the record - bear letters as designations, rather than numbers, with the possible exception of the Sourwine well, located south of 19th street, in the easterly portion of section 33, township 1 north, range 7 west, which well bears the number 33

Q What is indicated by this line, this hatched line, what does that represent?

A That represents approximately the contact between the recent and the ancient alluviums; on the westerly side of the map it is well defined, and the hatchings go through the 90-acre tract northerly, and there the definition of the contact between the two gravels is well defined, and the same is true of the little red hill lying west of the large Cucamonga Red hill, designated "small red hill" on the map, in the southwestern corner of the map; the line ~~between~~ through sections 33 and and 34, shown by this hatching, is approximately the contact as shown by the surface indications on the ground; it may be fairly close in some places, and I have placed that at a point to indicate conditions where there has been an intermixing of the materials, that is

an intermixing of the ancient and recent alluviums; so that an accurate and definite and exact location of that contact is somewhat questionable in some places.

Q What do you mean by the ancient alluvium?

A I mean the silts that were laid down in a much earlier geological period than the present, and have had time to decompose and change and oxidize, in distinction from the gravels from the present debris cones which are recent, and have a harder texture and lighter appearance.

The Court, Q I cannot quite see, and from your testimony I could not make out whether you meant that line of hatching on the east and west to be a continuous line, or is there a break on the north?

A At a point where the flood waters of the Cucamonga Canyon, of the easterly channel, which come through the Red Red Hill, at a point where they pass through the red hill, the recent material has been washed over the surface, and there is no surface indication at that point; I presume a little digging would show the ancient below, a few feet more or less; and I have not traced the line through sections 33 and 34; it may go further to the north; I have not observed it very closely, but I sketched that in from some observations that I made at one time in the field; the further north you go the more indefinite becomes the exact location of that line; that is as you pass into section 34.

Q In the purchases made by the San Antonio Water Company, in the beginning, at least for a while, you were the engineer of the company, in the neighborhood of the Red Hill?

A Yes, sir.

Q Will you take those up in their order, giving an account of them, giving your information and observation at the time?

A The first property purchased by the San Antonio Water Company comprised cert in lots which are included in the tract enclosed with a red border about the same, lying partly in sections 32 and 33, just immediately north of 16th street, township 1 north, range 7 west, and were the result of a contract or the conclusion of a contract between Frankish and Stamm and the San Antonio Water Company in regard to water developments, and have been referred to heretofore by witnesses in the testimony, and I believe the numbers of those lots were given.

Q State what observation you made of that before the purchase, giving the history of that so far as your knowledge goes, other than the measurements; I will take those up later.

A Well, in my study of the Red Hill formation and the hydrographic and topographic conditions back in 1888 and 1889, I was over that tract represented by the coloring here on the map, and those are the points that I selected as the most desirable prospect for water.

The Court, Q Were any of those experimental shafts on that tract?

A That is the tract they were on.

Q All of them. ?

A No; two of them; the first two were there; 3 and 4 were off this tract, not on this map; this map is on a much larger scale and was constructed for the purpose of greater

detail in and about the Red Hill only, and not of territory remote.

Mr Mc Kinley Q The first shafts on that property were put down under your direction?

A Yes, sir; and they are practically the locations of the 16th street wells numbers 3 and 2, and at that time were known as Sixteenth Street wells 1 and 2, and I think referred to under those numbers in the McPherson case.

Q When were those shafts put down?

A My recollection is that they were put down in 1889; there was some little time elapsed from the time we put down the first till we put down the last; the last one was the one put down in the Canyon, marked on Exhibit D as Experimental Well number 4.

Q Well, then give an account of those shafts and what you found there?

A Those shafts went down through the debris material and rock, sand and gravel to a depth of - -

Mr Britt, Q Did you preserve a log?

A I did not; but the material was very similar to that on the surface, with an admixture of boulders and gravels and sands. Those shafts were put down about 64 to 70 feet originally, and work was discontinued on them as soon as we got water a few feet in depth.

Q What did you find as to water in them, taking each one separately?

A Well, those two were fairly close together, 1 and 2, probably 300 to 500 feet apart, and we found the water standing at practically the same elevation; no experimental

[illegible]

[illegible]

[illegible]

work as to the amount of water was performed; it was simply a demonstration of the fact that the water existed there; I had nothing to do with the wells; I paid no attention to them after they were put down up to the time they began pumping in 1894 and 1895.

Q. The shafts were put down under your direction: who put them down as owner?

A. The Land and Improvement Company paid the expenses, and they were on the Land and Improvement Company land.

Q. That was the company controlled by Frankish and Stamm?

A. Yes, sir.

Q. Then come down with your description to your next knowledge of them?

A. My next knowledge of those wells was when Frankish and Stamm did the pumping of them. supplying water in lieu of a deficiancy of a supply from the Frankish and Stamm tunnel at the time they were running that tunnel by virtue of a contract they made with the San Antonio Water Company.

Q. Who did they supply that water to? The water pumped from the wells?

A. The water was turned into the pipe lines of the San Antonio Water Company.

Q. You have measurements I suppose of that?

A. I have no recorded measurement of that; it was estimated

Q. What is your best recollection in regard to it as to the amount? This is as to the water pumped from the 16th street wells by Frankish and Stamm?

A. My recollection is that at the pump it averaged about 30 inches; it was necessary to sink the shaft from time to

time as the pumping operations continued and the amount varied; at times it was 40 inches, and dropped off to 25 I suppose at times.

Q Do you know how deep the wells were at that time?

A I kept no construction record of the lowering of the wells; my recollection is that the shafts were about 64 feet deep at the time they were first dug, and that 64 feet represented approximately the distance to the water from the surface of the ground at that time.

Q You can go on with the history of those wells; how long did they continue the pumping, either by Frankish and Stamm, or by the Company, which means the same thing, whichever I say.

A I think in '95 and '96 that well was pumped and deepened; and the well number 1, now well number 3, was the well that was pumped, and very little work was done on the other at that time. My recollection is that the San Antonio Water Company took charge of it in the year '98.

Q Just state what was done at that time?

A During the preceding years Frankish and Stamm had sunk a bored well; they bored a well to some depth, which I think Mr Frankish stated correctly,- I haven't any notes of it of my own - and the pumping machinery was inefficient and the San Antonio Water Company needed the water, and in 1898 installed a considerable plant there, and sunk the shaft deeper, and in 1899, either in the latter part of 1899 or 1900 - I have marked 1900 on the map,- they sunk a deep well there, and installed a plant, and since that date - -

time as the pumping operations continued and the amount varied; at times it was 40 barrels, and dropped off to 20 I suppose at times.

Q. Do you know how deep the wells were at that time?

A. I have no construction record of the lowering of the wells; my recollection is that the wells were about 60 feet deep at the time they were first dug, and then at that represented approximately the distance to the water from the surface of the ground at that time.

Q. You can go on with the history of these wells; you say did they continue the pumping, either by Provincial and State, or by the Company, with same the same ending, whatever I say.

A. I think it was '70 was that well was traced and deepened; as the well number 1, now well number 1, was the well that was pumped, and very little work was done on the other at that time. My recollection is that the Ontario Water Improvement was started in the year '70.

Q. Just state what was done at that time?

A. During the preceding years Franklin and Dawn had each a bored well; they bored a well in some depth which I think Franklin stated correctly.- I have'n any notes of it or my own - and the pumping machinery was installed and the Ontario Water Improvement needed the water, so it had installed a monitoring plant there, and said the start deeper, and in 1970, either in the latter part of 1969 or 1970 - I have marked 1969 on the map.- they sunk a deep well there, and installed a plant, and since that date -

Q. That is on number 3?

A. That is present number 3 I am referring to; and since that time whenever they have needed water that well has been pumped and it has furnished water, varying all the way from 60 or 70 inches to 100 inches, as shown by the records which have been already introduced here, and some which will be put in later. Well number 2 of those experimental wells was idle, and I recollect of only one effort to get water from it, and that was at the time they had an air plant and that was unsuccessful, because the machinery was of a capacity to handle only the one well; and that was taken over by the San Antonio Water Company in its control of this property - acquirement of control,- and sometime in 1900 or 1901 a deep well was bored there, and that has since been one of the permanent sources of supply.

Q. How deep was that well?

A. I cannot give it from memory; I think I have put them in the records in so far as I know in the early part of the trial; they called for all that data and I gave them all that I had. Experimental wells numbers 7 and 4 were never extended or deepened after the original work, and I have no additional information concerning them.

Q. What wells there have ever been pumped and water taken from them by the San Antonio Water Company? Anything except 3

A. Each and every one of the wells shown on that exhibit marked 1 to 8 inclusive have supplied water for the Ontario people, or for the San Antonio Water Company; well number 6 known as the Rubio well has never to my knowledge discharged any water into the distributing system of the San Anto-

nio Water Company to be used in the Ontario Colony lands ; the waters from that well were used on the Rubio place ; well number 6 is in the flood channel or in the easterly limits of the Cucamonga wash.

Q What was your first knowledge of that well number 6?

A Mr Rubio owned the property on which that was located, and it was afterwards acquired by the San Antonio Water Company and that well was sunk about the time the Haskoll well was sunk, sometime in 1899 he began that work- I don't think he completed it in 1899; it was first a dug shaft and he took some water from it with a small pumping appliance that he had.

Q Have you any measurements showing how much?

A No, sir; I haven't any measurements of it.

Q Do you know how much was pumped from it?

A There was never any opportunity to measure the water there; the way they handled the water there it was impractical to measure it; I have seen it running on the orchard and it varied, depending on the elevation he lifted it to; when he lifted it to the surface of the ground for the purpose of irrigating the orchard south of the well, I should say he pumped about 30 or 35 inches; and when he lifted it to the northwest corner of his tract, about an eighth of a mile north of the well, on higher ground, I should say the amount pumped up there was 20 or 22 or 23 inches; and those amounts varied from time to time.

Q How did he get it up there to that upper part of his property?

A He had pumping machinery; it was forced there through a

pressure line by power. After the San Antonio Water Company acquired the Rubio place that well was continued to be pumped for a number of years for the supply of irrigation water to the Rubio place only, and the amount varied from time to time; the last year or two, possibly two years, the well has been out of commission, and the water necessary to supply the Rubio orange grove has been taken from one or the other of the Haskell wells known as wells 7 and 8 on this exhibit.

Q. Now with regard to the other well or wells there if there is more than one that you have not covered.

A. Well, my knowledge as to the Haskell well number 8 and w wells 1, 4 and 5 is only general; I had nothing to do with the supervision of the construction of those wells, and some of them were constructed during the period of time that I was not in any capacity in the employ of the company.

Q. Well, you were in the employ of the company at the time the Haskell well was purchased?

A. Yes, sir; at the time the Haskell wells were bored I was in the employ of the company; in fact I was gathering data for the McPherson case at the time that work was progressing, and I was there frequently and often.

Q. State the history of that well, your observation of it, and when I ask for history I mean your knowledge of it.

A. The first Haskell well came under my observation some years before it was acquired by the San Antonio Water Company, and was a shaft only, put down by Mr Haskell, from which he pumped some water.

Q. What was your estimate of the amount?

A I never saw him pumping the water myself, but I drew him a little sketch for a small reservoir that he built at the plant, and I know that hedid pump some water into the reservoir; whatever water he pumped from that well was used on the Haskell 20 acres; the extent of that use I know nothing of; the shaft must have been 60 or 65 or 70 feet deep when the San Antonio Water Company acquired it, and they installed a pumping plant and pumped what water they couldthere, which according to my recollection was 20 or 25 inches; and they began deepening the well; the shaft was sunk down to a considerably greater depth than when they purchased, and in the latter part of the year 1899 they put well tools in there, and drilled down to a depth of something like 700 feet I believe,the exact depth of which is in the record in my former testimony; and as to all these wells, the details of the formation, so far as I have any record of them I think has gone into the record, and my detailed knowledge of them I think has already gone in.

Q What was done with the Haskell well by the San Antonio Water Company?

A The San Antonio Water Company rushed that well in as rapidly as they could in order to get water from it, and in the year 1900 pumped a large volume of water from that well, and I made various measurements, some of which are in the record and some I wkll put in later; and that water went into their main pipe lines leading towards Ontario, and through the pipe lines was transported to Ontario and consumed for beneficial purposes; and those wells have been pumped, each and all of them, whenever water was required.

A. I never saw him pumping the water myself, but I drew him a little sketch for a small reservoir that he built at the plant, and I know that Redid pump some water into the reservoir; whatever water he pumped from that well was used on the Haskell 20 acres; the extent of that use I know nothing of; the shaft must have been 60 or 65 or 70 feet deep when the San Antonio Water Company acquired it, and they installed a pumping plant and pumped what water they could there, which according to my recollection was 20 or 25 inches; and they began deepening the well; the shaft was sunk down to a considerably greater depth than when they purchased, and in the latter part of the year 1899 they put well tools in there, and drilled down to a depth of something like 700 feet I believe, the exact depth of which is in the record in my former testimony; and as to all these wells, the details of the formation, so far as I have any record of them I think has gone into the record, and my detailed knowledge of them I think has already gone in.

Q. What was done with the Haskell well by the San Antonio Water Company?

A. The San Antonio Water Company washed that well in as rapidly as they could in order to get water from it, and in the year 1900 pumped a large volume of water from that well, and I made various measurements, some of which are in the record and some I will put in later; and that water went into their main pipe lines leading towards Ontario, and through the pipe lines was transported to Ontario and consumed for beneficial purposes; and those wells have been pumped, each and all of them, whenever water was required.

Pumping plants are installed at the present time at each of them, and it is only necessary to throw a switch to start the pumping plants as they are equipped with electrical appliances and are quickly put in commission.

Q. Is that all of the 16th street wells?

A. That covers them from 1 to 8 inclusive.

Q. Now, with reference to the 130 inches of water purchased from Stowell and the Cucamonga Fruit Land Company,- when were you first acquainted with the developments there - of the Stowell well?

A. I had very little to do with the waters of the Stowell tunnel in the early part of 1899; the first waters that I recollect of as going to Ontario were that 30 inches that were rented or leased.

Q. When was that?

A. It has been given by others in the record; I have not a record of the date; I remember it was taken through a metal pipe line which Mr Stowell constructed to Upland , and delivered through that line.

Q. Do you know anything about the disposition of any other waters that were produced by that well?

A. Well, I knew something of the transactions leading up to the purchase of that130 inches; and while they went outside for a disinterested opinion as to the water rights and so forth, in July 1899, I made a survey for the pipe line which is shown on this Exhibit E and designated 22 inch pipe line, which leads - the survey I made was for a pipe line through the Ontario Colony lands, taking the water from the sand-box known as the Stowell box just north of

10th street on the east line of the Ontario Colony lands. In July , 1900 I made a survey for that line and constructed the line as rapidly as possible.

Q Previous to that had you made an examination of the wells to ascertain the amount of water they were producing or would produce?

A No; I made no measurement of the wells; I have no recollection and have been unable to find any record of measurements made by me of the wells; if I have them I have overlooked them.

Q Were you at the wells? Did you see them?

A I have been at the wells repeatedly in one way or another.

Q Prior to the construction of the pipe line, prior to the purchase by the San Antonio Water Company did you examine them?

Q I did not examine them at the request of the San Antonio Water Company.

Q I don't care whose request you examined them at; I want to know whether you examined them; that is all.

A I was there at thexwells and made some study of them and knew of the Stowell well and its record, and took occasion to go there to see the well and I saw the developments at the time.

Q What did you observe at that time with regard to them?

Mr Britt: May I inquire if this question is directed to the wellswhich discharged into the tunnel?

Mr McKinley: Yes, the first wells from which the 130 inches were obtained or claimed to be obtained, and

purchased from the Cucamonga Fruit Land Company.

Mr Britt: Which were the subject of a deed by the Cucamonga Fruit Land Company and Stowell?

Mr McKinley: Yes, sir.

A My observation was that the Radie tunnel had passed off the 90 acre tract , and into a small tract of about 2 1/2 acres, which had a special designation - or two acre tract - and the '96 well and some others were located in that tract, and some others were located in that tract, and they had a large amount of difficulty in reaching those wells with the tunnel; I know the '96 well was discharged through a siphon for some little distance, down to another shaft, and down into that shaft and on through the tunnel.

Q When was it you saw that being done?

A Well, I noticed that at various times from the time the '96 well had made a record and had attracted attention; well, continuously; I was over there occasionally, and know the water was put to some beneficial use; and the San Antonio Water Company acquired some of it in 1898 I think, and the well was siphoned and the waters used from it; I passed through the tunnel from time to time at different times; I kept no record of these times, because I did not go there specially for that purpose. I observed them in passing through the country there; I cannot give you any record measurements at all; it is only my knowledge and recollection of what I saw, without making any special trip for the acquirement of any special and detailed record measurements.

Mr Britt: The witness speaks of a well being siphoned and

he calls that the '96 well?

A Yes, sir; the '96 well.

Mr Britt, Q Is that the same well as a well which is called a Stowell well?

A I think it is; yes, sir; Stowell put down several , but there was one that made a phenomenal record, and the one referred to as the '96 well or Stowell well.

Mr McKinley, Q Which well was the siphon inserted in?

A It is numbered on this map as 11; also "1896" is written opposite it; it is one of three wells right close together.

Q Is that the well which is called number 4 on Plaintiffs' Exhibit 1?

A Yes, sir; on Plaintiffs' Exhibit 1, the well I refer to as the '96 well is marked well number 4, 1896, elevation 1395, and it is the same well that I have been referring to and appears on Defendants' Exhibit E as number 11.

Q Are you able to fix the time when you first saw water coming from that well?

A I couldn't do that; it was in 1898, or prior to 1898 that I saw water there but I have no figures.

Q And how much at that time?

A I don't know that either; there was a siphon there with a gate in the siphon, and at times they did not allow it to run; there were times when I saw no water running there; that is my impression and my recollection.

Q Now, from that time on have you observed the production of that well?

A I have not observed the production of that well independent from the other and adjacent supplies which are

mingled with it and make the flow of water from the Eadie tunnel; there has been very little opportunity to observe individual wells in that section; records have been kept of the total output.

Q. Then you have nothing more particular to say of that well, other than in your measurements given or to be given?

A. I have no record of individual measurements made of that well, or of any other particular well there; I have measurements of the output of that tunnel, dating back, at various times, to 1899.

Q. Now, with reference to the developments of the Ontario Power Company,- when did you first become acquainted with those developments there, well number 14 and the extension of the Eadie tunnel?

A The original work of the Ontario Power Company, and the work of the Ontario Power Company performed after the acquirement of the stock of that company by the San Antonio Water Company I have very little knoeledge of, until the year 1903; the acquirement of that property and the early improvement of it was during a period of time that I had no official connection with the San Antonio Water Company; I have some measurements in 1903 and later.

Q. Well, give the history of that from 1903 on as you observed it, leaving out your measurements which I will call for later all together, if there is anything of importance to state in relation to it?

A. I don't believe I have any detail that would be of value in this case, in 1903, as to the development of that property; I do know that improvements were going on in the

singled with it and take the flow of water from the basin tunnel; there may have been, little apparently to observe individual walls in that earlier research have been kept of the usual method.

5. Then, on later soiling more particular in my of that well, after then in your observations either of in the district.

6. I have no record of individual measurements made of that well, or of any other particular well there; I have measurements of the depth of that tunnel, making such, at various times, in 1907.

7. Yet, also reference in the correspondence of the Pacific Power Company - that all the first review associated with these investigations there, will answer it not in relation of the basin himself.

8. The original map of the Pacific Power Company, and the map of the Pacific Power Company, referred after the completion of the plant of that company by the San Antonio Water Company I have, here little knowledge of, until the year 1909; the acquirements of that property and the work improvement of it was during a period of time that I had no official connection with the San Antonio Water Company; I have, some measurements in 1907 and later.

9. Yet, give the history of that from 1909 to as you re-period it. Further on, you mention another plan I will yet for later all hereafter, if there is anything of importance to state in relation to it.

10. I don't believe I have any detail that would be of value in this case, in 1908, as to the development of that property; I do know that, investments were going on in the

lining of the tunnel. The shaft known as the cement shaft close to the point where the tunnel passes off of the 90-acre tract and known in the record here as shaft in which well B is located, I put in a long list of measurements myself made in that shaft, of the waters flowing through that weir on to the 90-acre tract; that shaft was concreted and a measuring weir was put in; the tunnel from there south to the line of the 90-acre tract was piped and improvements in the nature of piping were done above; I know that work was done; I observed it at times when I was there, that some of that work was being done, but I did not observe the detail of it, because I had nothing to do with it at all.

Q Have you measurements of the water there at the Red Hill other than those you have put in?

A Yes, sir; I have a great many measurements that are not in the record.

Q Will you produce first the measurements prior to 1900, of the measurements at Cucamonga and around the Red Hill.

A Prior to 1900 I have the following measurements: they are measurements of Cucamonga water passing through the Stowell measuring box into the pipe line of the San Antonio Water Company, and represent waters of the Eadie tunnel that were on their way into the Ontario distributing system.

Q Now, you mean the San Antonio Water Company's distributing system when you say Ontario distributing system?

A Well, that is what I intended to say; it was carelessness on my part; it is the San Antonio Water Company's pipe lines that I refer to. August 26th, 1899, 117 inches. The measurements I am about to read were made over the weir

in the Stowell measuring box; that box I have referred to and located as being north of 10th street and at the east line of the Colony lands; it is known as the Stowell measuring box.

Mr Britt, Q About how far distant from the mouth of the tunnel?

A I measured it here on the map a while ago, and I estimated it at 2800 or 2900 feet; that is approximate, however; a little over a half a mile west of the mouth of the tunnel.

Mr McKinley Q Where did those waters come from?

A They came out of the Eadie tunnel, and were the waters that the San Antonio Water Company acquired from Stowell and others, from that Red Hill source.

Q From what developments did they necessarily come?

A They came from the developments north of the 90-acre tract.

Q What developments were there at that time?

A At that time there was the Stowell well -- there was the '96 well, and one or two other wells or shafts; and the water that accreted to the tunnelf from the formation in which the tunnel penetrated in and near those wells.

Q Do you mean north or west of the 90,acre tract?

A Well, it is north and west, probably would be a more definite location; the wells are numbered and located on both plaintiffs' and Defendants' Exhibits. There was a bunch of wells there.

Q Now, you can go on and give the other measurements at that point, and the dates and so on, and if any additional

development is added before the measurement, include that so we will understand just what we are getting.

A. I kept no record of the progress of the developments made by Mr Stowell; the only thing I was watching was to see whether the San Antonio Water Company got its 130 inches of water; these measurements were made for the purpose of ascertaining that.

On August 29th I measured at the same place 123.66 inches

On September 6th, 1899 I measured 120.33 inches.

On January 1st, 1900, I measured 136.25 inches.

On February 11th, 1900, I measured 115.45 inches.

On March 5th, 1900, I measured 94.60 inches

And these measurements were all taken at this Stowell measuring box.

Q. Now you have some other measurements there, have you?

A. That brings it up and into the year 1900; in the year 1900 I have a considerable number of measurements.

Q. Will you give those?

A. In the year 1900 I have measurements made at a number of points in and about the Red Hill, and I have a tabulation of them here with the head-lines as follows: "Water measurements of the Cucamonga Red Hill District for the year 1900, by F. M. Trask. This tabulation shows eight columns: the first is the date when the measurements were taken; the second is headed "Haskell Wells"; that means opposite given dates the Haskell wells were measured, and shows the amount in miners' inches; the third column is well number 3; that refers to the 16th street well number 3 as shown on the exhibits, and the measurements are in

inches , and are for the dates opposite which they are given. The fourth column is tunnel number 2 or the Cadie tunnel. In this column I have recorded at times the sum of the waters going to Ontario and Cucamonga , respectively; other measurements do not include the Cucamonga water; where the water is Ontario water only I have placed a star (*) after the measurement, the number of inches, and at the bottom of the tabulation I have marked "Cucamonga water not included". In other words, that star indicates definitely that the water measured as shown by that measurement was Ontario water only. Column number 5 is the Y tunnel weir and the measurement is given in inches opposite the date when it was taken; the Y tunnel weir was a weir right at the mouth of the Y tunnel. Column 6 is Y tunnel division box; the weir in the Y tunnel division box not only measured the Y tunnel waters , the waters measured over the first weir, but measured the waters that came in from the cienega between the mouth of the Y tunnel and the point of measurement in the division box, a distance of between 2000 and 2500 feet. Column number 7 is headed Lone Star Tunnel, and the figures represent the number of inches of water opposite the dates that were flowing from the Lone Star tunnel over this measuring weir. The eighth column represents the Creek Division Box; t is water was what is known as the Big Springs, down near the hotel or winery, and has been referred to as creek division box, or 30-inch cement pipe line.

Q. That is the water that the plaintiffs refer to in their complaint as the Cucamonga Springs as I understand it?

A That is my understanding of it.

Q Now, this tunnel number 2, shown here as the Eadie tunnel includes all waters coming from the 90-acre tract , and all waters coming from Stowell's developments adjacent thereto?

A In so far as I was able to ascertain on the particular dates those measurements were made that is correct.

Q That was made at the mouth of the tunnel?

A Yes, sir; the weir was at the mouth of the tunnel.

Q And included the waters going to the San Antonio Water Company and the Cucamonga Water Company both?

A Not always; wherever those measurements are followed by a star (*) next to the number of inches specified there was no Cucamonga water included; it was water going to Ontario exclusively.

Q And where there is no star did it include the Cucamonga water?

A It did include the Cucamonga water.

Q Now, I notice that the Y tunnel division box included all the waters that went over the Y tunnel weir did it?

A Yes, sir.

Q I notice there are larger amounts than the Y tunnel weir: What other waters would go into that?

A For some five or six hundred or a thousand feet, beginning at the mouth of the tunnel, and extended down the pipe line, there was a cienega formation that supplied some water; at different points that was taken into that pipe line; I don't know the detail of its pick-up or the taking of it in; I do know that the pipe line discharged more water in the creek division box than the tunnel discharged over the weir at the

Q. Did you understand it?

A. Yes, this tunnel middle 6, pipes here in the Sally Tunnel Isolated all water coming from the Cleveny Lake, and all water coming from Sherrill's downstream adjacent property. So as far as I was able to ascertain on the particular date there were measurements for the water in question.

Q. That was made at the request of the Tunnel?

A. Yes, sir; the water was at the request of the Tunnel.

Q. And included the water coming in the Sherrill Water Company and the Dunnsville Water Company?

A. Yes sir; whatever those measurements are followed by a star (*) next to the source if those specified there are Dunnsville water included; if not other pipes is placed accordingly.

Q. And were there in no other way to include the Dunnsville water?

A. It did include the Dunnsville water.

Q. Now, I notice that the 7 Tunnel drainage was included all the waters that went into the 7 Tunnel, was it not?

A. Yes, sir.

Q. I notice there was larger amounts from the 7 Tunnel than other waters would go into them?

A. For some time or the Tunnel is a diagonal line, beginning at the north of the Tunnel, and crossed over the pipe line, there was a drainage formation that supplied some water, at different points that was taken into the pipe line; I don't know the extent of the pipeline or how deep it is, I do know that the pipe line discharged more water. In the north direction the flow the Tunnel discharged was the water in the

mouth of the tunnel.

Q What sort of a line of pipe was that?

A Well, I think it is a cement pipe line; that is, where I have observed it; that is in the box.

Q There was no connection with any other development?

A Well, there was one or two openings, I know now; I have traveled over there since the country has dried out; there may have been one or two openings where the water might have been turned in, and there might have been other methods of gathering water between those points; I am not familiar with the details of the construction of that line.

Mr McKinley: We offer this tabulation in evidence.

A I will ask that as these are going to be copied into the record that they be returned to me, and not have them filed as exhibits; I have done this to expedite matters;. I have a mass of figures and I have tabulated them for that purpose.

Mr. Britt: That is satisfactory to us if they will be copied into the record by the reporter.

Said tabulation is admitted in evidence and is here extended into the record as follows:

work of the tunnel.

Q. What work of a line of pipe was that?

A. Well, I think it is a cement pipe line; that is, where I have observed it; that is in the box.

Q. There was no connection with any other development?

A. Well, there was one or two openings, I know now; I have travelled over there since the mystery has arisen and; there may have been one or two openings where the water oil were been turned in, and there might have been other methods of producing water between there points; I am not familiar with the details of the construction of that line.

Mr. McKinley: We offer this testimony in evidence.

I will ask that as there are papers to be copied into the record that they be returned to me, and not have them filed as exhibits; I have some like to separate matters; I have a case of figures and I have tabulated them for that purpose.

Mr. Avis: That is satisfactory to me if they will be copied into the record by the reporter.

This testimony is admitted in evidence and is here entered into the record as follows:

WATER MEASUREMENTS OF THE CUCAMONGA RED HILL DISTRICT

for the year 1900 --- By F.L.Trask.

Date	Haskell Wells	Well #3	Tunnel #2	Y.Tun. Weir	Y.Tun. Div.Box	Lone Star Tunnel	Ck.Div. Box
Jan. 12				54.75			
Feb. 1				55.1	77.7		
Feb. 4			126.	54.5	77.2	17.06	97.05
" 11	122.70		128.45				
" 17	108.50			52.6	71.6	16.20	89.3
Mar. 5	118.20		94.60ø				
" 12	132.30		87.50ø	48.77	71.10	68.1 P	79.05
Apr. 1	118.		94.15ø				
" 3	6-117.3	39.51	129.25		64.25	56. P	72.90
" 6				45.45			
May 7	88 120.90	53.65	105.55ø		68.70	56.95P	
Jun 5	99.10	50.	996.85ø		71.75	29.84P	73.50
July 3	101.65	81.50	78.45ø		72.65	57.70P	55.80
" 25			140.90				
Aug. 7		111.15	159.35		56.30		63.90
" 31	110.70	99.10	99.90ø		70.85	57.70P	54.80
Oct. 9	54.65	83.35	148.65		63.80		54.20
1903	71.2						
June 23	64.8	60.8					

ø - Cucamonga water not included.

Q. Now, are there some other measurements there? State what you have there?

A. I have here on this sheet, tabulated by own personal measurements of Cucamonga tunnel number 2 output or the Eadie tunnel. The measurements on this sheet are those that I made personally during the years 1904 up to the present time, inclusive, and they begin with August 8th, 1904 and show the amount of water going over the Ontario weir and the amount going over the Cucamonga weir, and the total for each day on which the measurements were made; there are four columns, the first being the date, the second the Ontario Supply, the third the Cucamonga supply, and the fourth the total, and I wish to add that as regards those measurements for the first two or three years, that the amount going to Ontario, when compared to the amount of water flowing on to the ninety-acre tract through the weir known as weir B, the record of which I have heretofore put in to court, it will be seen that the amount going to Ontario, to the San Antonio Water Company and the Ontario Power Company at differerent times does not agree with the amount going on to the 90-acre tract from the lands owned by the Ontario Power Company, and from the sources of supply of the San Antonio Water Company north of the Ontario tract; that is to say they are larger than the amounts sent to Ontario; in other words Cucamonga was getting more water than it was entitled to, according to this record, and there was some dispute as to the method of division.

Mr Stevens, Q. What years do those cover?

A. I would have to compare it with the original table to see

the exact dates, but it was the first two or three years.

Q. I mean the whole tabulation.

A. I said in my original statement in regard to it that it was from August 4th to the present time.

Mr McKinley, Q. Did it go to Cucamonga? A part of it?

A. Yes, sir.

Q. How did it go?

A. Underground through a pipe line.

Q. What Company - the Cucamonga Water Company?

A. The ziejero of the Cucamonga Water Company was the man that I met there, and he seemed to be in charge of the water and took possession of it

Q. It went to the Cucamonga Water Company?

A. It went to the Cucamonga Water Company; that was my understanding of it.

(Reading) August 8th 1904, Ontario 152.68; Cucamonga, 77.78; total 230.46; that means the total amount of water flowing from the 90-acre tract and -

Q. Do you mean coming out of the Tadie Tunnel or tunnel number 2?

A. And the total amount of water coming from the Tadie tunnel and going to Ontario Colony, and to the Cucamonga Colony, or the San Antonio Water Company and the Cucamonga Water Company, respectively. And in like manner for each date I have given the measurements.

Q. Those waters included the waters of the Ontario Power Company from its developments?

A. The waters from the Stowell developments.

Q. And the waters from any portion of the Tadie tunnel?

A Yes, or any wells along the Radio tunnel. These measurements I have segregated into two parts; but I have made no effort to segregate the water of the San Antonio Water Company from the water of the Ontario Power Company at any time.

Q That is really not answering my question; it includes all the water from all the developments that I named didn't it?

A Yes, sir.

Mr McKinley: We offer in evidence this tabulation with the same understanding that the reporter copy it into the record, and that it be returned to us.

Said tabulation is admitted in evidence and is here extended into the record as follows:

CUCA-ONGA TUNNEL #2 OUTPUT By F.E.TRASK

Date	~~Ontarion~~ Ontario	Cuca.	Total.
1904			
Aug. 8	152.68"	77.78"	230.46"
" 27	144.	74.12	218.12
Sept. 3	138.19	75.95	214.14
Oct. 4	135.05	60.95	196.
" 8	133.40	60.10	193.50
" 13	132.35	60.52	192.87
" 29	128.25	58.40	186.65
Nov. 19	118.02	60.52	178.54
Dec. 3	116.55	58.40	174.95
1905			
Jan. 7	110.09	60.52	170.61
Feb. 13	124.70	80.57	205.27
July 29	139.10	98.92	238.02
Aug. 5	146.45	87.67	234.12
Sept. 23	126.41	65.24	191.65
Oct. 7	122.89	58.40	181.29
Nov. 11	111.90	59.85	171.75
Dec. 2	126.96	67.97	194.93
" 29	133.01	71.22	204.23
1906.			
Jan. 20	133.01	71.22	204.23
Feb. 14	142.73	70.35	212.08
Mar. 19	145.93	75.80	224.73
Apr. 16	160.34	78.90	239.24
May 19	156.53	83.58	240.11
June 16	156.53	83.58	240.11
July 18	157.81	84.23	242.04
Aug. 10	161.65	86.30	247.95
Sept. 15	161.65	86.30	247.95
Oct. 12	161.65	86.30	247.95
Nov. 9	159.08	84.91	243.99
Dec. 22	161.65	86.30	247.95
1907.			
Jan. 24	160.34	85.60	245.94
Feb. 2	30.45	15.82	46.27
Mar. 2	38.83	20.36	59.19
Apr. 16	47.90	25.26	73.16
" 27	19.74	52.72	72.46
May 6	110.78	59.17	169.95
" 18	166.86	97.55	264.41
June 1	146.52	108.09	254.61.

Date	Ontario	Cuca.	Total.
1907.			
June 14	147.70"	108.81"	256.51
July 10	150.06	110.41	260.47
Aug. 17	148.88	109.64	258.52
" 30	186.01	101.06	287.07
Sept. 19	186.01	101.06	287.07
Oct. 6	181.29	99.01	286.30
" 21	178.65	97.40	276.05
" 31	12.07	41.75	53.82
Nov. 14	13.07	41.75	54.82
" 26	157.81	49.72	207.53
Dec. 4	155.27	48.97	204.24
" 14	157.81	77.76	235.57
1908.			
Jan. 9	154.02	75.92	229.94
Feb. 19	72.64	28.01	100.65
" 29	75.00	29.68	104.68
Mar. 10	80.68	31.20	111.88
" 30	61.07	45.77	106.84
" 30	110.98	81.21	192.19
Apr. 13	99.46	73.09	172.55
" 27	82.15	60.47	142.62
May 11	103.40	92.95	196.35
" 27	96.93	93.21	190.14
June 6	102.36	94.20	196.56
" 20	205.87	111.89	317.76
July 2	211.68	199.66	311.34
" 17	193.48	105.29	298.77
" 28	188.01	102.41	290.42
Aug. 7	190.71	103.83	294.54
" 29	222.98	120.92	343.90
Sept. 5	221.31	120.02	341.33
Oct. 6	208.48	111.14	319.62
" 19	222.98	120.92	343.80
" 28	227.14	91.41	318.55
Nov. 22	249.81	84.08	333.89
Dec. 6	222.12	120.47	342.59
" 26	49.67	49.67	97.34
1909.			
Jan. 16	51.15	51.15	102.30
" 29	54.22	54.22	108.44

Q At the time these measurements were taken was there a gate for controlling the flow of water from the Cucie tunnel?

A There was during the latter part of the period.

Q In what way was it controlled?

A It was controlled by the construction of a bulkhead in the Cucamonga tunnel. That bulkhead was constructed in 1907.

Q At about what time was it completed so that the water was under control?

A Well, it was closed January 29th, 1907.

Q The waters from all these developments, as I understand it came in by gravity, and a connection is made with the tunnel, with the Stowell well, and the Ontario Power Company development, so that the water is run in by gravity and can only be controlled by the fact that there is abulkhead?

A That is correct.

Q Have you other measurements there?

A Yes, sir.

Q State what that is?

A I believe at the request of plaintiffs I have put in the record my personal measurements of water pumped from the 16th street wells, in so far as I had those measurements at the date we were in court before in this same case; and I have here a tabulation headed "Measurement of pumped water, wells north of 16th street, continued, by F. E. Trask"

Q That is since the former hearing of this case? Since the adjournment?

A These measurements cover the period since the adjourn-

ment of the case, and bring the record down to date; the first column gives the date; the second column is a record of the number of inches pumped on the date opposite at well number 1; the third column is for the same purpose for well number 2; the fourth column for well number 3; the fifth column for well number 4; the sixth column for well number 8; the seventh column contains remarks relative to pumping operations; that simply covers the facts of the starting and stopping of the pumps and completes the record and is an essential part of the record.

Q. Was there no pumping in 1906?

A. There was none.

Mr. McKinley: We offer this tabulation, with the same understanding that the reporter shall copy it into the record and return it to us.

Said tabulation is admitted in evidence, and is here extended into the record as follows:

MEASUREMENTS OF [illegible] - WELLS [illegible] OF 16th ST.

Continued.

By E. L. Trask.

Date	#1	#2	#3	#4	#8	Remarks
[illegible]						#8 started at 7 A.M. 9/5/07
						#1 started at 6 A.M. 9/7/07
Sept. 19	57.67			71.44	69.00	#4 " at 7.55 A.M. 9/17/07
" 20	63.12			67.00	64.53	
Oct. 12	[illegible].37			64.76	70.41	
" 17	67.36			69.00	70.40	
						10/19/07 all pumps stopped
" 21					70.4[illegible]	#8 pumping about 1 hr.
Dec. 4	[illegible].32			79.91	79.19	Started pumps
" 14	[illegible]				72.00	All pumps ceased from 12/20/07 to Jan. 9/08
1908.						(Wells #1 & #4 pumped
Jan.						(on average of 6 days (in Jan. 08-, #1 at (rate of 63" & #4 - (65"
" 6					63.7[illegible]	#8 pumped 9 days - 12 hrs. each da.
June 2[illegible]	63.7[illegible]		64.53			#1 & #3 began pumping 6/16
July 1[illegible]	64.7[illegible]		63.65			
" 17	7[illegible].7[illegible]		7[illegible].4[illegible]	70.[illegible]		#8 pumped 10 days- 14 hrs. each da.
" [illegible]	61.51		65.51	73.64		#4 pumped 19 days in July

MEASUREMENTS OF PUMPED WATER - WELLS NORTH OF 16th STREET

Continued.

By F. E. Trask.

Date.	#1	#2	#3	#4	#8	Remarks.
Aug. 7	60.05		56.50	74.40	54.95	
" 29	55.81	93.76	48.20	73.64		#2 pumped 6 days in Aug.
Sept. 6	43.46	81.69	34.76	62.36		(Pumps #1 to #4 inc (Total average of 2 (days each this no.
Oct. 6		81.43	79.01	96.44		
" 19			55.49			#3 closed down at 2 P.M.
" 28			43.09			#1 pumped 2½ days - #3 - 9 days #4 1 day in Oct. #2 x - 4 days.
1906						
Nov. 22	55.01	79.91	76.70	96.37	57.99	(#1 pumped 10 days - (#2-11 da. (#3 & #4 - 29 days
						(#1 to #4 inc. pumped (2 days in Dec. 1906
1909						
Jan. 10		87.14		83.09		(#1 pumped 2½ days - (#2 & #3 10 days (and #4 3 days in (Jan. 1909.

Q What sort of a season was 1906 as to rainfall?

A The irrigation season of 1906 followed a very excessive rainfall; in fact two years of heavy rainfall; the result was that the gravity supply from the San Antonio Canyon, from the Frankish and Stamm tunnel, and from the San Antonio Tunnel and from the Cucamonga tunnel -

Q You mean from the Eddie tunnel?

A Yes, sir. - - was ample for the needs of the irrigators during that season, and consequently no pumping was indulged in.

Q Have you made some additional measurements?

A I have.

Q What is the tabulation you now have in your hand? Explain it.

A The tabulation I have here is of the Cucamonga Water Company well number K.

Q Where is that well?

A Well number K is a well located in the south part of section 34, township 1 north, range 7 west, about 500 feet north of the Base Line and possibly 400 feet east of Hellman Avenue; it is marked on Defendants' Exhibit X with a circle and the words "Well K, elevation 1590.4."

Q Is it marked on Plaintiffs' Exhibit 1 the same way?

A Yes, sir; it is marked on Plaintiffs' Exhibit 1 as draft K and is in lot 12 of the Cucamonga Homestead Association, in the upper right hand corner of the map.

Q Now, will you explain your tabulation.

A I have a little note at the top that the pump was installed in 1906.

My first measurement is June 30, 1906 and was 27.00 inches; the next date I was there was July 13, 1906, and I have recorded the words "not pumping," and in this way I have made a record of the measurements made at that well and tabulated them. The first column gives the date, and the second column gives the amount of miners' inches, except at some special dates where there was no pumping, and then I have made a memorandum of that fact; and on May 11th, 1908, I have a note here that I measured the depth to water from the surface of the ground and found said depth to be 30.2 feet.

Q You did take that measurement?

A That is a record of actual observation; these are my personal observations that I am putting into the record at this time. I wish to add - I don't know whether it is repetition or not, - that in all the measurements I refer to a miners' inch, which is one-fiftieth part of a cubic foot per second.

The Court, Q You mean that is the particular miners' inch that you have referred to?

A Yes, sir; the equivalent of it.

Mr McKinley, Q Are the figures with the decimal represent the number of miners' inches?

A The number of miners' inches.

Mr Haskell, Q Was the pump in operation when you took the depth of water in that well?

A If the well was pumped I showed the amount of water pumped and if it was not I showed that; but I don't think I could get the depth to the water if the well was being pumped, owing to the method of construction.

Q. Do you know how long that well had not been pumping when you took that measurement; it is marked not pumping.

A. The last record I have shows that on December 14th I found the well was pumping and the volume was 15.42 inches. The record of May 11th, 1908 there was no pumping and I don't know how long the well had been closed down; I have no record intermediate.

Q. You have no other knowledge except what is shown there?

A. This is the extent of my knowledge and record of the operations of the well.

Mr McKinley, Q. That is what year?

A. May 11, 1908.

Q. That refers to December 1907 and May 11, 1908?

A. Yes, sir; December 14th 1907 was when I found the well pumping last preceding.

Q. Do you remember with reference to that winter, what the character of the winter was between those dates?

A. Well, there was some rain in May and earlier.

Q. Have you the evidence of the rainfall here now?

A. Yes, sir.

Mr McKinley: Well, we will first introduce the tabulation which you have just explained, with the same understanding that it be copied into the record by the reporter and be returned to us.

Said tabulation is admitted in evidence and is here extended into the record as follows:

MUCAMONGA WATER CO.

Well #1.

Pump installed in '06.
Electric Power from D. P. Co.

June	30th,	06	.....27.06"	
July	10th,	06	.....	not pumping
"	27th	06	....	" "
Aug.	15th,	06	.....24.42"	
Sept.	1	06	.....21.07"	
"	15	06	.....19.75"	
"	29	06	.....18.06"	
Oct.	12	06	.....29.39"	
"	26	06	.....29.00"	
Nov?	9	06	.....29.00"	
"	24	06	.....27.82"	
Dec.	7	06	.....	not pumping.
June	28	07	.....33.00"	
July	10	07	.....29.39"	
"	30	07	.....29.00"	
Aug.	17	07	.....29.39"	
"	30	07	.....29.00"	
Sept.	19	07	.....28.72"	
"	28	07	.....25.16"	
Oct.	12	07	.....25.16"	
"	17	07	.....18.06"	
"	21	07	.....14.77"	
Dec.	4	07	.....	Not pumping
"	14	07	.....15.42"	
May	11	08	Not pumping depth to water 95.2' - El. -	
July	2	08	"....."...	

July 17 08 .....25.54"

" 28 08 .....25.16"

Aug. 7 08 .....21.52"

" 29 08 .....21.52"

Sept. 5 08 .....24.04"

Oct. 6 08 .....20.45"

" 19 & 28 08 ..... Not pumping

Nov. 22 08 .....23.59"

-o-

Q Now, give the rainfall.

A I have in my possession a printed card which has the following title "Record of rainfall at 22nd Street, Ontario Colony from 1891 to 1902, as kept by A. F. Harwood "

Now, in this printed and tabulated statement of rainfall - Mr Britt: The table of rainfall that has already been introduced into the record is the San Bernardino rainfall; and it might be confusing unless the whole table referred to by the witness were put in.

A I will state that I submitted this card and the data I have with it to Mr Wright, and he checked it through and found one or two little clerical errors, and those were corrected, and this brings the Harwood record from the season of '91-'92, down to the present time, and is tabulated by months, so that we have the monthly record for each month of each year, with the total for each year.

Mr Britt: I think we ought to object to putting in the record of rainfall from another locality different from that which has already gone in, unless it is deemed necessary to render clearer something that is not clear in the evidence heretofore; the object of the introduction of the rainfall record is that comparisons may be made as between different years, and that should be in the same locality, certainly; the rainfall table we had here before was the San Bernardino table; and I believe it is somewhat notorious, at least well known in this part of the country, that the rainfall is heavier at Ontario than it is at San Bernardino, and heavier than it is further west still.

I am, sir, your obedient

Mr. Cohen is an electrical engineer and which was the following little theory of matter as Time Travel, Omnario Mahony. Time Lord to Lock, as Taylor c. L. Lawson " Yet, in this process are complex entangled or parallel - or delta: The Delta of Galadri that has already been be- tween the round in the Sun Infinities radially, and it shall be reflecting, where the shady Delta reflected so by the atomic one pos la.

I. I will state that I consider this need and the case I have with it to be false, and be checked it through and found one of the Delta electrical errors, and there are overlaid, and this before the Lorentz reduced from the means of '12-'20, over is the present time, and is beha- lance of media, so that we have the monthly record for each month of each year, with the total for each year.

Mr Eric: I think we ought to adjust or prefer to the right of radical Time Lords Deadly Infernal Imp that when the already come to. Below it is Lawson Ambro- may be rather clearer. Another that is at time to the evidence Interfere; the object of the Intermediate of the radial years is that experiences may be made as between different years, and that would be by the same Deadly, Actually, the radial Delta is not very future see the Immortal Delta; and I believe it is somewhat auto- rism, at least will leave it back and it is reading. that the radial is better at future than it is at the Immortal, and another than I. Taylor and still.

If we could have the rainfall of San Bernardino for the last year or two that we hadn't before,--

The Court: It strikes me that we ought to have everything, the San Bernardino record down to date, and the nearest possible records to the site of this litigation.

Mr. McKinley: We will procure the San Bernardino record.

Mr. Britt: We have no objection to all of them.

A This is complete, from the season of 1891-92 to the present time, independent of any other record. I want to make an explanation in the record, and that is, that I have the original record not shown in the tabulation, and I have continued the record personally, and I have had Mr. Wright check it over so that we could agree on any little clerical matters. Mr. Wright has had them in his possession.

Q You are satisfied as to the authenticity of this?

A Yes; thoroughly. And I want to add further that this record is right in the particular basin where we are discussing the water problem. And after putting down the tabulation I have put the mean for the seventeen seasons which it covers, and then I have made a comparison with the San Bernardino record, brought down to date, which I understand is to be introduced here, after this tabulation is printed--

Q I suppose these are your deductions, and counsel would not care to have them in. We will put in simply the copy of the record and let the Reporter copy that into the record.

Mr. Haskell: Is that a comparison made with the San

Bernardino record from 1900-1901 down, or does it include the entire numberof years given by the San Bernardino record from 1870?

Mr. McKinley: I am not going to put in the comparison. Mr Trask has some figures, but I am not proposing to put that in. I am only offering the record.

Mr. Haskell: I thought you were offering the other.

Mr. McKinley: No, sir; I asked the Reporter to copy the part printed and the part in ink, and to omit these pencil memorandums of Mr. Trask. We may put that in later, but I don't care to force it on counsel now without their considering it.

The following is a copy of the record offered:

A RECORD OF RAINFALL

At 22nd Street, Ontario Colony

From 1891 to 1902, as kept by A. F. Harwood.

Elevation 1700'

Year.	July.	August.	September.	October.	November.	December.	January.	February.	March.	April.	May.	June.	Year.	Rainfall For Season.
91	.00	.00	.00	.00	.00	2.70	2.55	2.90	5.97	.50	3.28	.67	1892	19.00
92	.00	.00	.00	.12	2.96	3.67	9.50	3.61	12.52	.77	.20	.08	1893	33.23
93	.60	.00	.00	1.21	1.42	5.00	1.21	1.57	1.42	.28	.28	.00	1894	13.47
94	.00	.34	.56	.05	.00	8.66	9.03	2.58	4.75	1.40	.65	.00	1895	27.87
95	.00	.00	.00	.00	1.40	1.40	2.83	.00	5.25	.70	.93	.00	1896	12.51
96	.04	.60	.00	3.32	.93	1.66	5.26	7.82	5.85	.00	.07	.00	1897	25.52
97	.00	.00	.00	3.41	.40	.45	2.70	1.11	1.55	.50	2.60	.00	1898	12.50
98	.06	.00	.00	.25	.12	.55	2.83	.63	2.51	.19	.06	.90	1899	8.15
99	.00	.00	.05	1.75	1.70	1.05	1.75	.19	1.93	1.65	2.77	.00	1900	13.16
00	.00	.00	.64	.30	6.17	.00	5.30	5.10	.71	.75	1.50	.00	1901	23.56
01	.00	.00	.00	2.59	.75	.06	1.55	2.92	5.00	.29	.15	.05	1902	14.10
02	.00	.00	.00	.41	2.00	2.54	3.10	2.10	9.45	4.00	.63	.00	1903	24.23
03	.00	.00	.42	.00	.00	.00	.39	4.26	6.20	1.82	.30	.00	1904	13.47
04				.95		1.09	4.30	8.82	11.17	.85	3.54		1905	30.72
05				.17	2.96	.90	3.88	3.00	14.05	2.42	2.65		1906	30.01
06					.73	9.10	9.71	3.19	7.32	.65			1907	30.70
07				2.14	.22	1.11	7.20	4.35	1.30	1.82	.60		1908	18.24
08			1.86	1.05	.36	1.27	11.08	7.04						

Q Have you some other measurements, Mr. Trask?

A I believe so. This sheet contains a copy of my personal measurements made over Cucamonga weirs for the years 1904 up to December, 1907, and the balance I will have to read from my records, or bring them down to date from my records. This tabulation has a heading "Cucamonga Weir Records, by F. E. Trask". The first column gives the date. The second column gives water measured over weir #5 of the Cucamonga Water Company, which is the amount of water taken from the Lone Star tunnel. Column 3 gives the record of water measured at weir #6, Cucamonga Water Company. The waters measured over the weir were the waters pumped out of Lone Star tunnel No. 2 and rose to the surface of the ground at some point intermediate between its heading and its mouth, and there are only a few of those measurements, and the amounts mentioned should be added to the water measured over weir #7, the record of which is shown in column no. 4. Weir #7 records the total output of the Lone Star tunnel no. 2, and the weir is located near the center of section 3 on Hellman Avenue. Column 5 is a record of waters over Cucamonga weir no. 8 which has been referred to heretofore as the Creek Division Box Weir at the mouth of the 30-inch pipe line. The next column I will ask to have the figures omitted. It is weir #K and I have just put them in there. They are simply duplicates. I will cross them off with pencil because they are in the record already. It is simply an error of my type-writer. So that there are 5 columns on this tabulation.

Q You explained what each of these weirs was, I believe.

My attention was distracted.

You stated what each of these were, didn't you?

A I gave the name and the description of them which is coincident with the description which went in before.

Mr. Haskell: The heading should be Cucamonga Weirs instead of weir, shouldn't it.

Mr. McKinley: "Cucamonga Weir Record.

Mr. Haskell: You say there are several weirs recorded. The heading should be plural.

Mr. McKinley: I will have the witness explain the meaning of that heading.

A The headline is "Cucamonga Weir Records." The next line gives the numbers of the weirs at which measurements were made, and I have taken each column and specified what weir that number applied to. Following thereafter are the records made and the dates set down in column 1.

Mr. Haskell: And you have already testified where each of those weirs are located?

A I don't recollect whether I put all of them in or not. I think I have.

Mr. McKinley: Q State what the weirs are. I will save time that way.

A Weir #5 represents the water measured over a weir, said water flowing from the Lone Star tunnel no. 1. The location of the box in which that weir can be found is shown on defendants' exhibit "L" in section 34 at a point about 100 feet north of Base Line and immediately north of the northwest corner of the 35 -acre tract as designated on this plat, and the box location is marked by a square in

ink with the words "Lone Star Weir" in sand box no. 5.

Weir No. 6 is on the 35-acre tract near its southeast corner and is right at the margin of Hellman Avenue. It is represented by a square and a line representing tunnel no. 2, and the words "Star Weir No. 6" written opposite it.

Weir No. 7 is located on Hellman Avenue in section 3 right by the side of a box in which the Old Settlers measure their water, and the designation is put opposite the weir "Star Weir No. 7."

The Court: Q. Do the weir numbers on your tabulation correspond with the numbers on the map?

A. Yes; I have read the correct numbers on the exhibit here, and they are the same as those in the columns I have been describing.

The Court: Q. What exhibit is that?

A. Exhibit "." of defendants. Weir No. 8 is shown on Defendants' Exhibit "." in the southeast corner of section 4, township 1, South, Range 7 West, approximately 100 feet west of the east line of said section and about 400 feet north of the San Bernardino county road.

Mr. McKinley: We will offer this in evidence.

The following is a copy of said tabulation:

[illegible] with the words "Some other Exhibit" in small lower case. [illegible]

Exhibit No. 1 is an Oldsmobile Sedan, under the [illegible] control and in charge of Detective Sergeant [illegible]. It is represented by a square and a line representing Exhibit No. 2, and the letter "Also Exh. 1." written opposite it. Exhibit No. 2 is described as follows: Across in section 3 right hand side of a bar in which the Oldsmobile Sedan is [illegible], and the description is put opposite the word "Also Exhibit No. 2."

The Jurors: Do this with reference to your deliberation proceed with the consideration of the case?

A. Yes; I have read the newspaper account of the incident here, and they are the same as those in the statement I have been described.

The Jurors: Such evidence is ready?

A. Exhibit 1" of defendants. Exhibit No. 2 is shown as Defendants' Exhibit 1" in the preliminary hearing of witness [illegible], beginning 1, south, about 7 feet, approximately the first part of the east line of said section and about 200 feet north of the two-story residence south road.

Q. Exhibit: Do will other line in evidence.

The following is a copy of said description:

CHARTS WELL RECORDS- By F. H. Trask.

Date.	#5	#6	#7	#8
1904.				
July 9	[illegible]		96.36"	7.2"
Aug. 8	45.29		35.36	
Sept. 13	39.08		65.90	
" 15				
Oct. 4	36.60		57.60	4.6
Oct. 8	36.00		57.28	
Oct. 13	37.13	42.04	13.31	
" 29	36.05		55.35	3.35
Nov. 19	33.40	40.33	11.20	
Dec. 13	32.61	41.36	9.93	
" 17	30.05		50.95	
" 24	29.53		50.93	
1905				
Jan. 7	28.76		2.10	2.74
Aug. 5	37.69		64.20	7.00
Sept. 23	40.16		53.45	5.90
" 30	31.32		46.60	5.20
Oct. 7	31.30		48.48	5.10
" 14	31.37		46.08	6.70
1906				
July 18			44.26	12.50
Sept. 15			36.75	13.20
Oct. 12	32.30			
Nov. 9	32.30		26.30	11.60
" 24	33.20		27.35	13.00
Dec. 7	36.05			

Date	#5	#6	#7	#8
1907				
Mar. 2	.70			
" 31	.32			
Apr. 16	.50			
" 27	17.30			40.88
May 6	17.30		24.07	42.18
" 16	49.53		62.33	40.58
June 1	50.78		60.35	26.40
" 14	49.07		54.72	28.70
" 11	52.12		56.59	25.68
" 30	51.12		56.59	21.96
Aug. 17			44.85	32.57
" 30			37.04	29.73
Sept. 28	64.71		42.50	29.70
Oct. 12			42.50	27.62
" 17			45.49	32.55
Nov. 26			65.90	37.84

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MITCHELL: I have the San Bernardino card brought down to date.

Mr. Haskell: That has gone in already.

Mr. Britt: We have no objection to this.

Mr. McKinley. I offer this in evidence, and it is admitted that it may go in, the card showing the San Bernardino rainfall, C. E. Johnson Observer, by months, down to and including February, 1909.

~~The following is a copy of said record.~~

SEASONAL RAINFALL

FOR

SAN BERNARDINO, CALIFORNIA

Elevation 1054 feet above sea level.

Latitude 34° 06′ 05″ Longitude 117° 17′ 30″

SIDNEY P. WAITE, Observer 1870 to 1891

DR. A. K. JOHNSON, Observer 1891 to 190

SEASONS	July	August	September	October	November	December	January	February	March	April	May	June	TOTAL
1870-71	.00	.00	.02	.09	3.11	.89	6.91	2.21	.19	.34	.11	.07	13.94
1871-72	.00	.04	.13	.60	.88	3.91	.00	2.20	.37	.79	.06	.00	8.98
1872-73	.00	.18	.04	.00	1.17	4.40	6.50	1.25	.51	.84	.21	.00	15.10
1873-74	.00	1.06	.02	.01	.74	5.73	5.51	8.76	1.08	.48	.42	.00	23.81
1874-75	.00	.00	.06	1.82	1.88	2.20	7.20	.15	.22	.07	.05	.00	13.65
1875-76	.00	.00	.00	.00	7.50	.02	6.55	1.92	3.41	.44	.03	.03	19.90
1876-77	.00	.00	.00	.20	.40	.00	3.50	4.03	.83	.26	.30	.00	9.52
1877-78	.00	.00	.00	.86	.50	3.95	3.33	6.68	2.57	1.71	.66	.07	20.33
1878-79	.07	.00	.02	.14	.05	4.70	3.59	1.00	.50	1.20	.24	.03	11.54
1879-80	.11	.02	.01	.94	3.40	6.50	1.56	1.33	1.45	5.00	.04	.00	20.36
1880-81	.00	.00	.00	.14	.67	8.80	1.40	.36	1.66	.46	.01	.00	13.50
1881-82	.00	.00	.00	.80	.27	.50	*1.11	2.65	3.30	2.91	.00	.00	11.54
1882-83	.00	.00	.00	.10	.15	.45	1.60	1.10	2.82	2.95	.00	.00	9.17
1883-84	.19	.00	.53	.85	.09	2.63	1.63	12.20	9.95	5.68	3.17	.59	37.51
1884-85	.00	.00	.00	.00	.11	3.75	2.79	.11	.28	1.89	1.69	.19	10.81
1885-86	.00	.00	.00	.39	4.36	1.20	6.34	2.52	4.18	2.36	.32	.16	21.83
1886-87	.00	.00	.00	.00	.11	.61	.39	6.44	4.41	1.90	.42	.22	14.50
1887-88	.11	.04	.09	1.17	2.29	1.91	4.01	3.60	3.41	.58	.52	.03	17.76
1888-89	.00	.00	.00	.05	4.12	4.64	.93	1.50	6.55	2.05	1.13	.00	20.97
1889-90	.17	.63	.11	2.30	2.23	10.85	5.44	2.52	.89	.00	.31	.00	25.45
1890-91	.13	2.16	.88	.58	1.27	3.02	.00	7.78	.06	.53	1.67	.00	18.08
1891-92	.00	.91	.93	T	T.	1.67	3.24	3.30	1.75	.37	2.10	.08	14.35
1892-93	.00	.00	.00	.16	1.02	2.23	4.53	3.37	8.00	.48	.03	.00	19.82
1893-94	.20	.00	.05	1.05	.30	2.28	1.26	.88	1.15	.40	.56	.00	8.13
1894-95	.00	.16	.37	.15	.00	7.25	7.39	1.14	3.44	.64	.44	.00	20.98
1895-96	.00	.00	.00	.00	1.14	.66	2.02	.00	2.92	.37	1.00	.00	8.11
1896-97	T.	.17	.00	2.10	.98	1.09	3.40	5.40	3.41	.08	.11	.00	16.74
1897-98	T.	.00	.13	2.10	.21	.57	2.10	.60	.97	.48	1.08	.00	8.24
1898-99	.00	.00	.00	.03	.05	.44	2.03	.51	3.22	.07	.19	.95	7.49
1899-00	.00	T.	.01	.81	1.47	.84	.92	.00	.92	1.96	1.71	.00	8.64
1900-01	.34	.00	.23	.36	6.10	.00	3.48	4.58	.43	.56	1.23	.05	17.36
1901-02	.00	.27	.07	1.09	.28	.04	1.65	3.02	3.89	.57	.12	.15	11.15
1902-03	.01	.00	.00	.09	1.94	1.94	1.96	1.67	6.47	3.10	.24	.00	17.42
1903-04	.00	.15	.46	.07	.00	.00	.18	2.21	5.34	.80	.16	.00	9.37
1904-05	.00	.14	.06	.32	.00	1.03	3.92	6.58	6.00	1.18	1.55	.00	20.78
1905-06	.00	.00	.13	.00	2.81	.74	2.97	2.89	8.00	1.16	.96	.22	19.88
1906-07	.00	.00	.05	.01	2.42	7.12	6.33	2.14	4.58	.16	.11	.25	23.17
1907-08	.00	.00	.00	2.75	.10	.97	4.71	4.20	2.03	.13	.31	.02	13.62

(*) 12 inches snow Jan. 12, 1882

1908-09 .05 .05 1.11 1.55 .26 .66 .40 3.76

Average seasonal rainfall for 38 years 15.93

Q Have you any other rainfall records?

A Yes, sir.

Q What have you got?

A I have a statement of the daily rainfall upon which the card is based for a part of the time. That is, for the seasons of 1901 and (2 down to thepresent time. I have the daily rainfall.

Mr. Britt: Is that really worth the space that it would take up?

Mr. McKinley: This can be used as an exhibit. It has some bearing on the case.

A It has some bearing. I will introduce a chart based on it.

Mr. McKinley: We will have this put in and just marked as an exhibit. We won't have it copied.

EXHIBIT J.

Q Have you some more measurements, Mr. Trask?

A I have here a tabulation headed "Sunset Tunnel & Wells-- Cucamonga, Cal." I have at the head of this some statements as to what I found-- some water measurements and some water elevations, with the dates, and then I have tabulated, beginning with 1905, down to the present time. I have tabulated water measurements made by me in the years 1905, '6, '7 and '8.

Q Where were these measurements taken?

A These measurements were taken over a weir some five or six hundred feet south of the wells of the Sunset Water Company.

Q Includes the water of both wells?

A Yes, sir; whenever such water was being turned into the line.

Q Were they being pumped at the time you took the measurements?

A All waters that are measured here are pumped waters, sometimes one well going and sometimes both.

Q Have you some observations there as to the conditions?

A I have made no observation as to whether one or both were running. Whenever the water was 30 inches or less, only one pump was running; whenever it was 30 inches or more, both pumps were running.

Q Can you tell which well it was that was running?

A There is no record of which one was running. There are two columns in this exhibit , one giving the date and the other the number of inches, with an occasional explanatory statement as to whether the wells were being pumped or not.

Q This statement at the top, Nov. 12, 1904, "pumped steadily since May 16, 1904", what is the meaning of that?

A That records a statement made to me by the engineer. It is simply a foot note that I made in my book. I believe that is the date of the first actual measurement I made of the waters flowing over the weir at the outlet of their tunnel.

Mr. Pritt: Mr. Trask, the statement here "Volume of water pumped Nov. 12, 1904, 25.45 inches, Nov. 19, 1904 , 25.04, are those measurements made by yourself, or reports made to you by some other person?

A. All water measurements there are actual measurements made by me. The statement above there was simply a foot note which I got from the man in charge of the plant. But all measurements are my own personal observations.

Mr. Curtis: We object on the part of the Sunset Water Company to that portion which contains the words "May 11 Engineer says water is 91' below surface" and "pumped steadily since May 16, 1904.

Mr. McKinley: We will cut those all off. I will mark in parenthesis what is to be omitted, and you can copy it into the record. I will show it to Mr. Curtis.

The following is a copy of the said tabulation, omitting the words indicated by the statement of Mr. McKinly and the objection of Mr. Curtis:

SUNSET TUNNEL & WELLS--CUCAMONGA, CAL.

Volume of water pumped:-

Nov. 12, 1904 25.45"

" 19 " 23.04"

Surface elevation 1390. at well #1

Water " 1275. pump running.

April 26-1906 Water Sunset Well #1 - } 1300
" " " #2 - }

1905			1906		
Aug.	16	54.02"	June	30	47.56"
Sept.	8	51.42"	July	27	44.01"
"	15	49.33"	Aug.	16	45.78"
"	30	51.73"	"	24	47.53"
Oct.	14	52.04"	Sept.	1	44.60"
"	22	51.15"	"	15	52.99"
Nov.	4	49.[illegible]"			
"	18	[illegible].37"			

1907			1908.		
June	14	56.20"	May	27	47.55"
July	30	41.87	June	8	42.94"
Aug.	30	50.86"	"	20	50.60
Sept.	19	46.96"	July	2	51.73"
"	28	45.54"	"	17	41.87"
Oct.	12	47.55"	"	28	56.68"
"	21	Not pumping	Aug.	7	56.56"
Nov.	26	56.10"	"	29	56.94"
Dec.	4	25.93"	Sept.	9	56.94"
"	14	Not pumping	Oct.	6	56.20"
			"	19 & 23	Not pumping
			Nov.	22	46.25"
			Dec.	8	Not pumping.

Q. Have you some more measurements?

A. I have here a tabulation with the headline "Well No. 33 Sourwine Well." I will state that this is the well now owned by the Upland Water Company. There are three columns on this tabulation: The first is Date. The second gives pumped water in miners inches, and the third gives water elevations. This tabulation contains all the records of water elevations, and water measurements that I have of that well.

Q. Made by you?

A. Yes, sir.

Mr. McKinley: This tabulation ~~xxxxx xxx xax~~ is offered with the same understanding.

The following is a copy of said tabulation:

WELL #33 50 FOOT WELL

Date	Pumped Water	Water elevation.
1904		
July 9	53.3"	
" 30		1355.3
Sept.10	24.7"	
Oct. 15	23.5"	
1905		
Feb. 23		1347.6
Apr. 29		1349.5
May 20		1350.5
June 27		1351.8
Sept.30	40.8"	
Oct. 28	33.2	
1906		
Sept.19	34.3	
Dec. 22		1355.9
1907		
April10		1362.7
1908		
Jan. 9		1372.3
Apr. 13		1379.6
May 11		1378.9

Witness: This tabulation bears the head line "Cucamonga Canyon Water."

Q What is meant by Cucamonga Canyon Water?

A These measurements are records of the creek flow, and there are a few records of the tunnel flow.

Q Creek flow at what point?

A The point of measurement was some little distance north of the Cucamonga Ranch. It is up in the mouth of the Canyon.

Q That is the surface flow of Cucamonga Creek?

A Yes, sir; at a point above any point where we distributed water in the gravel beds of the creek and probably not over 1000 feet below the point where the Cucamonga Water Company tunnel development is.

Q Cucamonga Company?

A Ioamosa tunnel development.

Q This is below that development?

A Yes.

Q Are there any other diversions up there?

A There is only one diversion. The waters are taken out by the Ioamosa people through a cement pipe line, and these waters include the tunnel waters. In fact, they take all the waters in the tunnel. They take the tunnel water besides the surface water. Sometimes I have used the capital letter "T" and that means tunnel; and where I use the letters "Ck" it means creek. All the measurements of the tunnel waters were made in a measuring box near Mr. Sonntag's house some little distance from the canyon on the high bluff. That is where all the official measurements were taken. It

is a point where all the surface waters have been measured. And the last measurement on this sheet, Jan. 29, 1909, is water measured at Sixteenth Street. It is made on the same date as the preceding measurement showing a measurement of--

Q. You don't mean that shows the water in the canyon?

A. It shows what we didn't put in the gravel bed. I intedded to state that they wer measurements made in the canyon except the last, which I went on to state.

Q. That is the measurement of flood water at Sixteenth street?

A. That is the measurement of flood waters thatwere not being put into thegravel on that particular date.

Q. Whereabouts on Sixteenth Street was that measurement taken?

A. Right near the Rubio house-- the Rubio well.

Q. Locate it on the map.

A. In the creek wash, on defendants' exhibit "A", the point of this last measurement on this tabulation would be in the Cucamonga Flood Channel wash and within 100 feet of well no. 6 as shown on said exhibit, and westerly of the Stowell wells.

Mr. Haskell: Q. Is that last measurement flood waters that have been turned into the creek from the San Antonio Water Company's system? Or is it water that comes from some other source?

A. I am not talking about the San Antonio Water Company--

Mr. McKinley : Answer the question.

A. This sheet shows the waters measured in the Cucamonga

Canyon.

Mr. Haskell: Q That last measurement was taken down at Sixteenth Street?

A Yes, sir; in the flood channel of Cucamonga Canyon.

Q There is testimony here that the San Antonio Water Company is turning surplus waters into the wash above that point. Which was this measurement, water turned in or water that comes naturally from the mountains above?

A This is Cucamonga Canyon water purely.

Q Did you follow it up to see?

A No; I followed it down.

Mr. Britt: I do not understand from any of the testimony here that the water turned in from San Antonio Creek came down the main wash which passes east of the Red Hill. I haven't heard any evidence to that effect.

A Thath is correct, Judge Britt. Those waters have not been brought over to the easternmost channel of Cucamonga wash, but simply to the debris cone in the westerly and center part of it.

Q In the westernmost channel of the creek?

A Or channels. You had better make that plural. But none of the eastern channels have been supplied with San Antonio water as yet.

Mr. McKinley: We expect to get it over there after a while, but we haven't progressed that far.

Mr. Britt: If you put in enough and do not take it out in your wells, we will probably not complain.

Mr McKinley: We are trying to put in enough and I think we have.

A. I might add further, that wherever these measurements are tunnel measurements, they do not represent flood waters. The other measurements are flood waters from the Cucamonga Canyon.

The Court: Q. What do you mean? That you measured that after heavy storms?

A. Some of them were following heavy storms, and all followed the rainfall when the precipitation was such that there was an excess of run-off over the diverted supply to the Ioamosa people.

Mr. Britt: Q. It might properly be cross examination, but I would like to ask the witness if these measurements of the creek were all made at the same place except where it is noted that it was at Sixteenth Street.

A. The point of measurement may have varied three or four hundred feet, owing to the cutting out of the channel from time to time. That is, I used a meter and I had to select some point where I could get a reasonable cross section.

Q. It was not measured over a weir?

A. No; it was a meter measurement, and the point is above the point where effort was made to spread the waters in the gravel, and up into the canyon.

Q. None of this represents the storm flow?

A. It does not represent the maximum storm flow because I didn't get out there at such times. But many of those measurements represent storm flows, although not the maximum flow.

Q. The tunnel mentioned is the Franklish and Stamm tunnel?

A No, sir; the Ioamosa tunnel, which is driven into the creek bed of Cucamonga Canyon some 1000 feet above the point where I made my measurements.

Q Where is that tunnel relative to the Frankish and Stamm tunnel?

A It would be northeast, I should say, half orthree quarters of a mile or something like that.

Mr. McKinley: We offer this with the same understanding.

The following is a copy of said tabulation:

CUCAMONGA CANYON WATER

Aug.	16	'89	Tunnel	47.00"
			Ck.	153.50"
			Total	200.50"
Feb.	5	1900	Ck. & T.	100.00"
May	13	1904	Tunnel	101.90"
			Plus 50 or 60" passing downCk.	
Sept.	10	1904	Ck. & T.	48.25"
Apr.	26	1905	T.	47.09"
			Ck.	348.40"
			Total	395.49"
May	8	1905	Ck.	1076.5"
June	3	1905	T.	149.31"
			Ck.	215.50"
			Total	~~172.62"~~ 364.81
Oct.	28	1905	T.	104.92"
Mar.	19	1906	Ck.	1386.00"
Apr.	3	1906	Ck.	1667.60"
"	27	1906	"	538.00"
May	19	1906	"	246.70"
May	28	1906	"	1125.70"

July	7	1906	T.	219.90"
			Ck.	219.00"
			Total	438.90"
Sept.	15	1906	T.	219.90"
Jan.	11	1907	Ck.	1554.50"
Feb.	20	1907	Ck.	721.50
Apr.	5	1907	Ck.	2660.00"
June	1	1907	Ck.	409.90
Oct.	21	1907	"	213.80"
Feb.	19	1908	"	385.00
Oct.	28	1908	"	80.00"
Jan.	29	1909	"	678.50"
"	29	1909	" (At 16th St.)	131.20"

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Q. Have you another one?

A. I have here a tabulation of my personal measurements made of the discharge of the Frankish and Stam tunnel.

Q. Before we put that in I want to take up the history of the Frankish and Stam tunnel if you are familiar with it, of that tunnel. What knowledge did you have of the Frankish and Stam tunnel during the time of its construction?

A. I was engineer of the Frankish and Stam tunnel and had charge of the engineering features of that work. They selected a location-- an approximate location for the tunnel-- and instructed me to make the alignment and locate shafts and keep the construction force upon the grades and alignments that I laid out on the surface of the ground, in their underground work.

Q. At what point did you begin the construction of the tunnel.

A. I haven't anything to show the exact point, but I can describe the approximate location, and it is shown on Defendants Exhibit "D". The tunnel itself is located in the westerly half of sections 20 and 29, township 1 north, range 7 west. The mouth of the tunnel is shown as south of 23rd street, and the heading or upper part or end of it as north of 26th street. I do not know that it is platted in accurately, but I do know that the length is approximately 6000 feet, and its relation to the Cucamonga wash is quite well shown on this map. It is some little distance from it at the beginning. I mean by the wash the large deep notch or flood cut in the debris cone. The upper end of that tun-

nel, under this scale, must be some '3 or 400 feet from the westerly bank of the Cucamonga flood channel.

Q When did you begin the construction of that tunnel?

A I think in '94. I have water measurements over the weir in 1895.

Q How long did the work continue on it?

A Parts of two years. I think it was finished some time in '95.

Q Did the work begin at the mouth of the tunnel or at the shafts?

A It began along the whole length of it. I think they were working as many as six or seven headings at one time.

Q Where and when did you find water?

A I can't give you the date when we first measured water in that tunnel. I have a note which is taken from some of my field notes that the length is about 6000 feet, with a 400-foot shaft at the upper end.

Q That represents the depth below the surface at the upper end of the shaft?

A No; it misrepresents it. They sunk down 315 or 320 feet and ran to that point with the tunnel; and at that time there was no water when they got there; and a water witch in Los Angeles told them that if they went down further they would strike the Colorado River, and they went down approximately 100 feet below. My first accurate measurement was September 14, 1895.

Q Thereabouts?

A That was made at or over a weir at or near the mouth of the tunnel.

Q. Was there anything about the history of the tunnel other than that that appears in your measurements?

A. That tunnel was run through the debris cone and various materials excavated and bored through were similar to what we find on the surface. I found lozenges of close stiff material, quite impervious, and I found open porous material such as I would find on the surface of the canyon.

Q. What was that impervious material?

A. I would find silts and some clay mixed in the shape of a lozenge. It was apparently in an eddy of some kind where the silts had settled. And we also found large coarse boulders with very little silt, but some very coarse gravel and coarse sand in the interstices of the boulders.

Q. How did you find that as it extended throughout the length of the tunnel?

A. I met those varying conditions from start to finish throughout the 6000 feet. There was one place where we ran into quite a ~~xxxxx~~ silted condition, evidently intersecting an old flood channel of some kind, and at that point we got some water, and that point was near the middle of the tunnel or possibly a little north of the middle of the length ~~xxxxx~~ of the tunnel. It must be between 3000 and 4000 feet. I haven't in mind the exact location, but I recollect the condition, that we tunneled into a stratification that produced some water, and during dry years it was the only place in the tunnel where there was any water. In wet years, when the detris cone is filled and the canyon discharges water, the level raises and considerable water shows in the tunnel.

Q. Does it come in no other place?

A. When the debris cone is saturated it does for probably two or three thousand feet, where it gathers water.

Q. In the construction of the tunnel did you strike water at other points?

A. No; I have no recollection of water being struck except at this one point. This is spread out for a distance of two or three hundred feet. It had the appearance of having been a silted up flood channel which was buried some hundreds of feet below the surface and which was bringing in and controlling the water. We also had some run-off from that tunnel, although it has dropped down sometimes to less than a miners inches of water.

Q. With regard to the condition of the water there, was it a large or small amount? Describe it.

A. The run-off from that tunnel has been extremely fluctuating. Following years of heavy rainfall the volume went up to in excess of 100 inches. We struck no pocket of water of any amount. We simply got a little excess water over what we had. The volume ran down as it always does. We found no largepockets.

Q. In the construction there did the amount run down very quickly or decrease very quickly?

A. At the time we ran that tunnel the gravel mass was not all well saturated and the amount was small.

Q. What time of the year did you strike that?

A. In the winter of '94 or '5. Sometime in the spring of '95.

Q. You may explain your tabulation.

A. I find that my first actual, measurement was September 14, 1895, and there was 6.6 inches on that date.

Q. Where was that measurement taken?

A. All these measurements were taken over a weir near the mouth of the tunnel. This tabulation contains two columns, one the date and the other the measurement in inches. I find on April 5, 1907-- I have no measurement on that day, but I put this explanatory note in: "Weir out of order, but estimate flow in excess of date next above." The date next above is February 20, 1907, when I measured over the weir 124.96 inches, and that is the only explanatory note I have here-- No, I have another. On May 11, 1907, I say "about 120 inches." There was some condition about the weir which did not conform to normal conditions, and there was some question abeutnthe exact amount. There is a pipe line leading from this tunnel to the pipe system of the San Antonio Water Company on 22nd Street. During the irrigation season the water that is in the tunnel passes into the system of the San Antonio Water Company and it is measured at the turnouts below. At times there is considerable more than a head and it has to be passed into the diagonal lines and laterals, and the zanjero has a measurement at all the turnouts.

Mr. McKinley: We offer this under the same understanding.

F. & S. Tunnel.

Length about 6000'- 400' shaft at heading.

Flow 1 to 5" first year, about 1yr. after completion.

After a storm it increased to 20 to 30"

Sept. 14, '95		6.6"
Apr. 6, '96		19.9"
June 25, '96		17.2"
July 15, '96		14.4"
Sept. 15 '96		10.5"
Aug. 16 '97		12.7"
Oct. 4 '97		7.5"
Mch. 16 '98		11.9"
July 5 '98		4.4"
Oct. 2 '98		2.3"
Mch. 6 '99		1.2"
July 3 '99		1.4"
Mch 5	1900	2.3"
Aug. 6	1900	2.0"
Oct. 8	1900	1.6"
June 11	1904	21.0"
Oct. 15	1904	2.6"
Apr. 26	1905	50.0"
June 3	1905	70.0"
Aug. 8	1905	28.5"
Sept. 11	1905	16.3"
Nov. 9	1905	12.6"
Jan. 17	1906	11.4"
July 7	1906	90.0"
Sept. 8	1906	30.0"

Oct. 5,1906		23.4"
Novr 2 1906		10.0"
Dec. 14 1906		8.1"
Jan. 14 1907		52.7"
Feb. 20 1907		124.96"
Apr. 5 1907	Weir out of order, but estimate flow in excess of date next above.	
May 11 1907	about	120.00"
June 6 1907		111.80"
July 10 "		91.70"
Sept. 6 "		55.00"
Oct. 5 "		37.86"
Nov. 8 "		48.10"
Feb. 22 1908		55.80"
March 16 "		71.88
Apr. 6 "		55.35"
May 8 "		49.06"
June 6 "		35.51"
July 6 "		23.40"
Aug. 7 "		12.12"
Oct. 9 "		4.00"
Nov. 8 "		5.00"
Dec. 13 "		4.40"
Jan. 10 1909		5.50"
" 29 "		9.30"

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Q. Have you another tabulation?

A. I have here a tabulation showing the depth to water from the surface of the ground at the Bodenhamer well.

Q. Where is that?

A. The Bodenhamer well is located south of 21st Street and about 100 to 150 feet west of Mountain Avenue. I have marked the location with a small circle and above it have written "Bodenhamer Well."

Q. Who operates that well?

A. It is not operated. It is simply a deep shaft with water standing in it, and I have kept the records to note the fluctuations from month to month and year to year.

Q. It does not belong to the San Antonio Water Company?

A. Yes, it is property of the San Antonio Water Company and the measurements I have here show the fluctuations in the water level or water plane at that point; and the first is April 26, 1905, and the last is December 13, 1908. There are two columns: The first gives the date and the second gives the depth to water from the surface of the ground on the specified date.

Q. It is simply a shaft there? A. Yes, sir

Q. Never was pumped? A. Yes, sir.

Q. When? A. I don't remember. I have no record of it.

Q. You don't know how long ago it was? A. No; it has been a number of years. I had nothing to do with that. The water was pumped at such a great depth that the expense was too heavy to be commercially feasible.

Q. Who pumped it? A. The San Antonio Water Company pumped it some years ago

Mr. McKinley: We offer it with the same understanding.

The following is a copy of said tabulation:

BOMBHAKER WELL.

	Depth to water.
April 26-05	125.5'
Oct. 11-05	110.6'
Jan. 17-06	112.0'
Mar 5-06	105.5'
April 9-06	109.0'
May 19-06	91.5'
July 10-06	75.1'
Aug. 9-06	76.5'
Sept. 8-06	80.0'
Oct. 5-06	85.0'
Nov. 2-06	90.0'
Dec. 14-06	94.9'
Jan. 14-07	96.2'
Feb. 11-07	99.5'
June 6-07	66.4'
July 10-07	71.0'
Aug. 7-07	75.50'
Sept. 6-07	81.00'
Oct. 5-07	84.50'
Nov. 8-07	88.60'
Feb. 22-08	99.5'
Mar. 16-08	101.50'
Apr. 6-08	102.5'
May 8-08	99.8'
Nov. 8-08	106.8'
Dec. 13-08	109.5'

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Q. Have you another tabulation?

A. I have here a tabulation of my personal measurements made at Weir C, recording the total San Antonio Water Company Cucamonga pumped water. That is, at 16th Street.

Q. Where is that weir C?

A. Weir C is in box C and is so marked on Defendants Exhibit "D". The location of this box is just south of 16th Street.

Q. Mark it here on the map.

A. It is at the junction where the water from well no. 1 joins the main pipe line taking the waters--

Q. It represents all the water taken from those wells at the time the measurements were made?

A. All the pumped water goes through this box and over this weir, and the measurements made on these particular dates are measurements of the total pumped water for those specific dates. There are two columns here: One gives the date and the other gives the number of miners inches.

Mr. Britt: These measurements and this table are only of the discharge at the time specified when you personally examined?

A. That is correct.

Mr. McKinley: We offer this with the same understanding.

The following is a copy of said tabulation:

MARK # C

Recording Total S.F.P. Co. Duc. Pumped Water

By F. W. Trask.

DATE	Disch.	Date.	Disch.
1904		**1905**	
June 18	118.20"	Jan. 7	202.24"
" 27	116.13	Sept. 8	185.73
July 2	1[illegible].75	" 15	231.27
" 9	170.45	" 23	315.30
" 16	227.54	" 30	320.40
" 22	219.42	Oct. 7	339.00
" 26	229.32	" 14	306.90
Aug. 8	265.50	" 28	270.03
" &713	335.90	Nov. 4	265.32
" 27	306.00	Nov. 4	265.32
Sept. 3	278.04		
" 18	337.05		
" 23	311.10	**1907**	
Oct. 4	340.20		
" 8	342.30	Sept. 30	207.63
" 15	311.10	Oct. 5	202.35
" 29	335.90	" 12	202.35
Nov. 18	300.90	Dec. 4	220.35
Nov. 19	330.75		
Dec. 3	286.92	**1908**	
" 17	2[illegible]7.33		
" 24	232.00	July 28	21[illegible].09
		Aug. 7	209.40
		" 29	296.94
		Sept. 5	2[illegible].00
		Oct. 6	261.48
		Nov. 22	3[illegible].00

Cont'd - 319,2

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Here the Court takes a recess until to-morrow, March 11, 1909, at 10 o'clock a.m.

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DEED.

"This Indenture, made and executed this 3d day of July, A. D. One Thousand Eight hundred and Seventy four (1874) Between Isaac W. Hellman and Isaioh M. Hellman of Los Angeles County and State of California, parties of the first part, and the "Cucamonga Homestead Association" of the same place, of the Second part, Witnesseth, that the parties of the first part, for and in consideration of the sum of One Dollar, and other valuable consideration, to them in hand paid by the party of the second part, the receipt of which is hereby acknowledged, do by these presents grant, bargain, sell and convey unto the said party of the second part, the following described tract or parcel of land, lying and being situate in the County of San Bernardino, State of California, and known as a part of the Rancho Cucamonga and being all that part of said Rancho lying and being north of the San Bernardino Base Line as shown by the Patent thereof and plat accompanying the same, issued by the Government of the United States on the 9th day of December A.D. One thousand Eight hundred and Seventy two (1872) to Leon V. Prudhomme Admr. & saving and accepting the lands heretofore sold to the Cucamonga Co. of which J. Archebald is President; reference being thereunto had will more fully appear. Also thirty five acres pf said Rancho south of the San Bernardino Base Line, being the same tract described in the deed executed by Jose C. Carrillo and Maria Merced M. C. Carrillo to Isaac W. Hellman bearing date December Fifteenth in the year of our Lord one thousand eight hundred and Seventy one, reference being thereunto had will more

fully appear; also, one hundred and sixty acres of land commencing at a point three (3) chains east of the South-West corner of Section four (4) Township one (1) South, Range Eight (8) west of San Bernardino Meridian, thence north of true Meridian, variation 14° 45' E. Eighty chains to a point on the Base Line; thence east along the Base Line twenty chains to a point; thence south eighty chains to a point on the South boundary of Section four; thence west twenty chains to the point of commencement, being the same land described in a certain deed of conveyance executed by Isaac M. Hellman to Isaias W. Hellman, dated 11th day of June, A. D. 1873 recorded in Book "L" of Deeds, page 526 of said San Bernardino County. Together with all and Singular hereditaments, tenements and appurtenances thereto belonging, and all right and rights of water from springs, lakes, marshes, creeks, flumes, ditches and other sources, and all rights perfect and imperfect to the waters of Cucamonga and San Antonio Canyon. To have and to hold the same together with anything thereunto to appertaining to the party of the second part, its successors and assigns forever.

In Witness Thereof, the ~~party~~ parties of the first part have hereunto affixed their hands and seals the day and year first above written.

Isaac M. Hellman (Seal)

Isavah W. Hellman (Seal)

The following words were interlined over the third from the bottom of one 1st page before execution, "Saving and excepting all lands heretofore sold to the Cucamonga Company

of which J. Archebald is President.

J. J. Warner, Notary Public.

State of California, }
County of Los Angeles, } ss:

On the twenty second day of March in the year eighteen hundred and seventy-six, before me, J. J. Warner, a Notary Public, personally appeared Isaiah W. Hellman and Isaias W. Hellman, known to me to be the persons whose names are subscribed to the annexed instrument, and they severally acknowledged to me that they executed the same.

J. J. Warner,

(Seal) Notary Public.

A full, true and correct copy of the original filed for record at request of E. T. Blow at 35 min. past 10 A. M., March 28th, 1876.

James W. Swing, Co. Recorder,
by W.A.Nisbet, Depty.

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The following is the description contained in the deed of CUCAMONGA HOMESTEAD ASSOCIATION to L. H. MOTT.

"All the following described real estate situate in the County of San Bernardino, State of California, to-wit: Twenty acre Lot Number (6) Six in Block Number Sixteen and Building Lot Number Six in Block Number Eight, of the tract of land of the Cucamonga Homestead Association, according to the survey and sub-division of the tract, made by George Hansen, Surveyor, in the months of July and August, 1874, which said survey, together with the map, or plat, thereof, now in possession of the party of the first part, is hereby referred to and made part hereof for more particular description; the tract of land surveyed and sub-divided as aforesaid, being the same heretofore conveyed to the party of the first part by I. W. Hellman and I. H. Hellman, by deed of date July 3, 1884. And, The said party of the first part for the consideration aforesaid, and pursuant to the resolution aforesaid, does further grant, bargain, sell, and convey unto the said party of the second part, his heirs and assigns, forever, as an easement appurtenant to said parcels of land hereinbefore described, and for use thereon, for purposes of irrigating and domestic use, one three hundredth part of all the right, title and interest acquired by the party of the first part by vertue of the aforesaid conveyance from I. W. Hellman and I. H. Hellman in and to all the water flowing or to flow in the Creek or Arroyo known as the Cucamonga Creek or Arroyo; and also the right to use in common with the other owners of said water

under such rules and regulations as may hereafter from time to time be adapted prusuant to the provision and condition hereinafter contained, all reversions, flumes, ditchss, and other water-works that are now or may hereafter be constructed by the party of the first part for the collection of said water, or for conducting the same upon said tract of land of the party of the first part of which the parcels of land hereinbefore conveyed from part. This conveyance of water and water rights is however expressly made upon and subject to the following conditions to wit:

First. That the distribution of said water shall always be made among the owners thereof according to their respective rights therein, and such distribution shall alowys be mad under and in accordance with such rules and regulations as shall from time to time be adopted by such owners; and for the adoption of such and regulation there shall only be necessary the vote in favor thereof of the owner or owners of more than one half of said water and water rights.

Second. That the expenses of conducting and distributing said water, including the cost of maintaining the ditches, flumes, reservoirs and other water-works constructed for such purposes, shall always be borne by the owners thereof in proportion to the amount of water used by them respectively.

Third. That the rules and regulations to be adopted as hereinbefore provided shall include rules for the levy and collection from each owner, of his proportion of the expenses aforesaid, and that the amount so levied at any time shall be

lien and charge upon the interest of such owner in said water and water-works and also upon his interest in the land to which said water-rights are appurtenant and upon which said water may be used.

Book 39 of Deeds, page 174.

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The following is the description contained in the deed of

L. H. MOTT to J. P. HASKELL.

"All those certain lots and parcels of land situate, lying and being in the County of San Bernardino, State of California, and bounded and particularly described as follows to wit:

Twenty acre lot Number Six (6) in Block Number Sixteen (16) and Building Lot Number Six (6) in Block Number Eight (8) of the least of land of the Cucamonga Homestead Association wording to the survey and subdivision of said part made by Geo. Hansun in the months of July and August, 1874, a map or plat of which said survey is now on file in the office of the Record of San Bernardino County to which reference is hereby made for more particularly description and the said party of the first part for the consideration aforesaid does further grant, bargain sell and convey unto the said party of the second part his heirs and assigns forever as an easement appurtenant to said parcels of land hereinbefore described and for use thereon for purposes of irrigation and domestic use One Three Hundredth (1/300) part of all the water flowing or to flow in the Cucamonga Creek or Canyon, Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appurtaining and the reversion and reversions remainder and remainders rents, issues and profits thereof.

Book 39 of Deeds, page 170.

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DEFENDANTS' EXHIBIT I.

FIRST: All that certain real property in the Rancho Cucamonga, San Bernardino County, California, bounded and particularly described as follows, to-wit:-

Commencing at the South-west corner of Section Four (4), Township One (1) South, Range Seven (7) West, San Bernardino Base and Meridian; thence North 0° 06' East on Section line six hundred (600) feet; thence South 89° 57' East four hundred and ninety eight (498) feet; thence North 0° 06' East twenty-nine hundred and sixty (2960) feet; thence South 89° 57' East ten hundred and nineteen and thirty-two hundredths (1019.32) feet to lands of Cucamonga Land and Irrigation Company; thence North 0° 01' East eighteen hundred and sixty-one and nine hundredths (1861.09) feet to San Bernardino Base Line; thence South 89° 56' west along San Bernardino Base Line twenty-eight hundred and thirty-nine and thirty hundredths (2839.30) feet; thence South 0° 6' West Eighty-one and eighty-three hundredths (81.83) chains to North line of Section Eight; thence South 89° 51' East twenty and four hundredths (20.04) chains to place of beginning; estimated to contain three hundred and thirteen (313) acres.

Also Lot Four (4) in Section Nine (9) and Lots One (1) Two (2), Three (3) and Four (4) in Section Eight (8), Township One (1) South, Range Seven (7) West, San Bernardino Base ~~Mer~~ and Meridian, containing Sixty and twenty-one hundredths (60.21) acres.

All as per map recorded in Book 4, page 9 of Maps, Records of San Bernardino County.

Reserving therefrom rights of way granted to San Antonio Water Company for pipe lines and reserving all rights to Cucamonga Fruit Land Company for development and supplying one hundred and thirty (130) inches of water as per contract Cucamonga Fruit Land Company to San Antonio Water Company, dated April 5th, 1899.

SECOND: All that real property situated in Ontario, San Bernardino County, California, bounded and described as follows, to wit:-

Lots numbered Thirty (30), Thirty-one (31), Sixty-six (66) Sixty-seven (67), Sixty-eight (68), Sixty-nine (69), Seventy (70), Seventy-one (71), One hundred two (102), One hundred three (103), One hundred four (104), One hundred five (105), One hundred six (106), One hundred seven (107), One hundred eight (108), One hundred nine (109), One hundred ten (110) Two hundred forty-five (245), Two hundred forty-six (246), Two hundred forty-seven (247), Two hundred forty-eight (248), Two hundred seventy-one (271), Two hundred seventy-two (272), Two hundred seventy-three (273), Two hundred seventy-four (274), Two hundred seventy-five (275), Three hundred nine (309), Three hundred ten (310), Three hundred eleven (311), Three hundred twelve (312), Three hundred thirteen (313), Three hundred fourteen (314), Three hundred thirty-seven (337) Three hundred thirty-eight (338), Three hundred thirty-nine (339), Three hundred forty (340), Three hundred forty-one (341), Three hundred forty-two (342), Three hundred forty-three (343), Three hundred forty-seven (347), Three hundred forty-eight (348), Three hundred forty-nine (349), Three

hundred fifty (350), Three hundred seventy-three (373), Three hundred seventy-four (374), Three hundred seventy-five (375), Three hundred seventy-six (376), Three hundred eighty-five (385), Three hundred eighty-six (386), Three hundred eighty-seven (387), Three hundred eighty-eight (388), Four hundred eleven (411), Four hundred twelve (412), Four hundred thirteen (413) Four hundred fourteen (414), - a plat of which is recorded in the County Recorder's office in San Bernardino County, in Book 11, of Maps, at page 6 thereof.

THIRD: All that certain property situated in the Colony of Ontario County of San Bernardino, State of California, and particularly described as follows, to-wit:-

The railroad bed, rails, ties, bonding and fittings of Ontario & San Antonio Heights Railway Company, commencing at the Power House of the Ontario Electric Company situated on Lots One (1), Two (2) and Thirteen (13) in Block Twenty (20) of the San Antonio Heights Tract; thence running in an easterly direction to the head of Euclid Avenue in the Colony of Ontario; thence South along the center of said Euclid Avenue to State Street, in the South Side Tract, State Street being almost a quarter of a mile south of the point at which road bed of said Ontario & San Antonio Heights Railway Co. crosses the main line of the Southern Pacific R. R. Company.

FOURTH: All that certain real property in the Colony of Ontario, County of San Bernardino, State of California, particularly described as follows, to wit:-

Lots One (1), Two (2) and Eighteen (18) in Block Twenty (20) of San Antonio Heights Tract, as the same are shown marked and platted upon a map thereof recorded in Book 4 of Maps, at page 48, Records of San Bernardino County.

FIFTH: All that certain real property in the Colony of Ontario, County of San Bernardino, State of California, particularly described as follows, to wit:-

Lots Nineteen (19) and Twenty (20) in Block Sixty-eight (68) of the South Side Tract, as the same are shown marked and platted upon a map thereof recorded in Book 4 of Maps, at Page 12, Records of San Bernardino County.

SIXTH: All power, rights, and privileges owned by Ontario Electric Company, in and over lands in the San Antonio Canon and Cira Rancho.

SEVENTH: About fifteen hundred seventy-five (1575) feet No. 10, 22 inch riveted steel pipe, used for conducting water to power house, all fittings, nozzles, gates, etc. for same.

Two (2) 100 H. P. Tutthill water wheels with shafting, belts, pulley and other machinery and accessories used in driving electric generators.

1 General Electric Company's 62 K.W. Lighting Generator; One General Electric Co.'s 62 K.W. Power Generator; 1 - 40 H.P. Electric Generator; 1 - 25 H.P. Auxillary Electric Generator; 1 Workshop lathe and outfit, Tools, Spanners, Switchboards, and all other equipments for use in Power House and elsewhere.

EIGHTH: About eight and one-half (8-1/2) miles overhead construction for both lighting and power purposes, including copper trolley and lighting wire, poles, brackets.

About twenty-four (24) miles of No. 4 copper conducting wires for lighting purposes, and about twenty-five (25) miles of branch copper wire for lighting purposes, two passenger cars and two trailers.

NINTH: Section One (1), Township One (1) North, Range Eight (8) West, S. B. B. M.

Section Twenty-five (25), Township Two (2) North, Range Eight (8) West, S. B. B. M.

Also a right of way for the construction and operation of street railroads and electric light lines under the rights of way reserved by the Ontario Land and Improvement Company in the plats, maps and deeds of the Ontario Land and Improvement Company heretofore recorded in San Bernardino County, California; also the right to use the waters diverted by the San Antonio Water Co., for power and mechanical purposes owned by the Ontario Land and Improvement Company under the decree in the case of the San Antonio Water Company vs. The Ontario Land and Improvement Company, dated July 14, 1893.

TOGETHER with all the tenements, hereditaments and appurtenances belonging or in anywise appertaining to the above described property, and each and every part thereof, and together with all the rights, privileges, easements, rights of way, water rights, rights for the conducting of water, rights of way for pipe lines, roads, and all other privileges,

motives and accessories and franchises of every nature and kind used in connection with, or in and about the above described property, and every part thereof, and all other property, of every kind and nature, whether real, personal or mixed, hereinbefore described, and all other property of every kind and nature, whether real, personal or mixed, which may hereafter be acquired, held or owned by said party of the first part.

TOGETHER with all other property of every kind and nature or like character, or otherwise, and whether real, personal or mixed, which may hereafter be acquired, held or owned by said party of the first part, and the party of the first part hereby covenants to maintain and continue the equipment in all respects of the same standard and character as now existing, or as hereafter established, by proper replacement from time to time to make good the deficiency and deterioration that may be caused in any manner respect, whether in kind or quality, in the said items of personal property, whether and as now exist or may hereafter be acquired all such replacement at all times to be and to constitute a part of the property held and to be held for the security of the covenants herein undertaken on the part of the party of the first part.

Book 7 of deeds, page 324.

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